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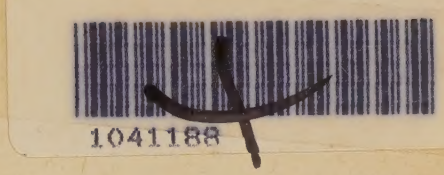
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THE AMERICAN NATION
A HISTORY

FROM ORIGINAL SOURCES BY ASSOCIATED SCHOLARS

EDITED BY

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A HISTORY

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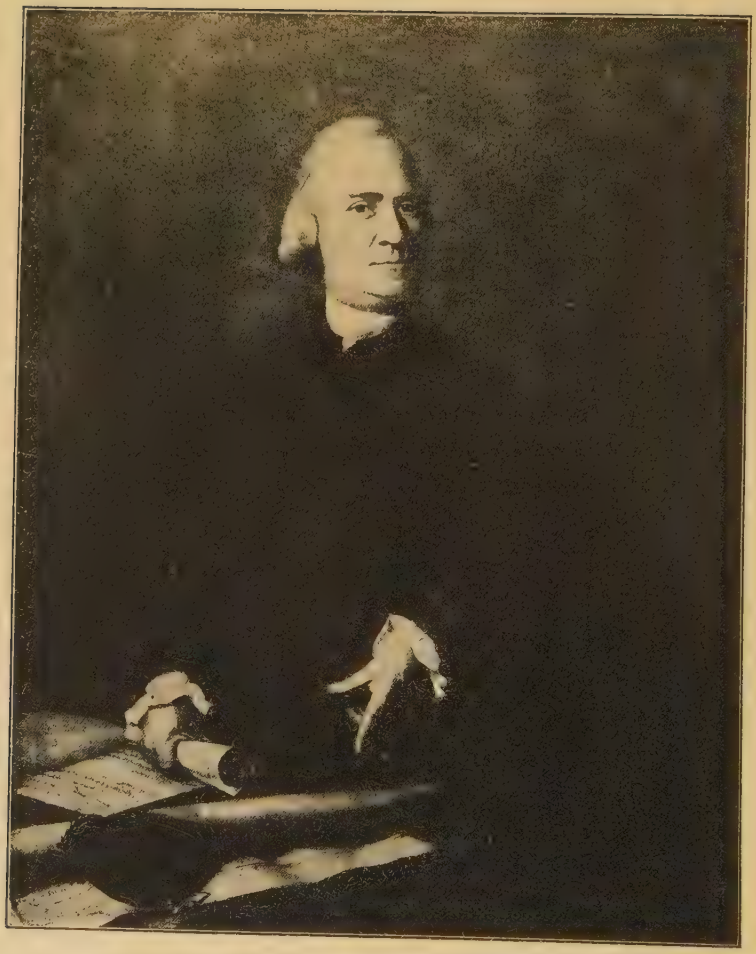

SAMUEL ADAMS

THE AMERICAN NATION: A HISTORY

VOLUME 8

PRELIMINARIES OF THE REVOLUTION

1763–1775

BY

GEORGE ELLIOTT HOWARD, PH.D.

PROFESSOR OF INSTITUTIONAL HISTORY IN THE UNIVERSITY OF NEBRASKA

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EDITOR'S INTRODUCTION

FEW periods of American history have been more written upon than the decade preceding the Revolution. Nevertheless, there is still room for a brief volume upon the subject; all the world knows that the Revolution really began almost fifteen years before its beginning, because of the efforts of the British government to give greater unity and stiffness to its colonial system, both as to government and as to trade with other nations; but the real motives underlying the uneasiness of the colonies still need enlightenment.

In the arrangement of *The American Nation*, both Greene's *Provincial America* (vol. VI.) and Thwaites's *France in America* (vol. VII.) are introductory to this volume: the one showing the organization of government against which they complained, and the other the danger from the French, the removal of which opened the way for revolution; the volume is also most closely linked with Van Tyne's *American Revolution* (vol. IX.).

Professor Howard opens with two chapters on the conditions and political standards of the Americans on their side of the ocean, and of the

British on their side; then follows (chap. iii.) an account of the system of Navigation Acts as it then existed, which may well be compared with chapters i. and xix. of Andrews's *Colonial Self-Government*, and chapters iii. and xviii. of Greene's *Provincial America*. The two preliminary episodes of the Parson's Cause and Writs of Assistance (chaps. iv. and v.) are followed by a discussion of the Sugar Act of 1766, which Professor Howard considers the starting-point of the Revolution. In three chapters (vii., viii., ix.) the Stamp Act, Stamp Act Congress, and repeal are considered; in two more chapters the Townshend Acts and the attempts to enforce them by the military are described.

The narrative then gives way to an indispensable discussion of the Anglican Episcopate, which fits into Greene's discussion of the same subject in an earlier volume (*Provincial America*, chap. vi.). The first appearance of the West as a distinct factor in national life is described in chapter xiii. and will be resumed in Van Tyne's *American Revolution* (chap. xv.); and, in a later stage, in McLaughlin's *Confederation and Constitution* (vol. X., chaps. vii., viii.).

The final steps leading up to revolution, from 1773 to 1775, occupy chapters xiv. to xvii. The last chapter of text is the argument of the loyalists, a strong presentation of the reasons which led so many thousand Americans to adhere to the mother-country. It should be compared with Van Tyne's

American Revolution (chap. xiv.). The Critical Essay on Authorities is conveniently classified by subjects which do not follow strictly the order of the chapters.

The aim of the volume is to show what the issue really was and why people who had lived under one general government for a century and a half could no longer get on together. Professor Howard's investigations bring him to about the same point as those of earlier writers—viz., that war was inevitable because of long antecedent causes tending to independence, and was precipitated by the failure of the home government to understand either the situation or the American people; but that it was not a result of direct and conscious oppression. Yet this fresh study of the evidence results in a clearer view of the difficulties of the imperial problem; and brings out in sharper relief the reasons for the apparent paradox that the freest people then on earth insisted on and deserved a larger freedom.

AUTHOR'S PREFACE

THE struggle between the English colonies and the parent state resulting in the recognition of a new and dominant nation in the western hemisphere is justly regarded as a revolution. Its preliminaries cover the twelve years between the peace of Paris in 1763 and the appeal to arms in 1775; but its causes are more remote. Up to the very beginning of hostilities the colonists disclaimed any desire for independence; yet it seems clear to us that unconsciously they had long been preparing themselves for that event. The origin of the Revolution is coeval with the earliest dawning of a sentiment of American union. Its assigned causes were, indeed, mainly economic and political. It was not a social revolution in the conventional sense; yet it was profoundly sociological in character. The conditions were favorable to the rise of a more united and a freer society in America; but this was hindered by the inertia of a colonial system which the American people had outgrown. Hence it is a grave mistake to see in the struggle between Great Britain and her colonies merely a useless contest provoked by the fanaticism, the ambition, or the

stupidity of a few leaders on either side. A revolution cannot be explained on the basis of personal influences alone.

To the friends who have aided me in many ways during the preparation of this book I desire to convey my grateful thanks. The maps showing the environs of Boston and the Indian delimitations were prepared by Mr. David M. Matteson, of Cambridge. For the other maps I am mainly indebted to the skill and research of Professor Clark Edmund Persinger, of the University of Nebraska. Professor George Henry Alden, of the University of Washington, has generously placed at my disposal the maps in his *New Governments West of the Alleghanies before 1780*; and for like permission to make use of the map in his *Western State-Making in the Revolutionary Era*, I am under obligations to Professor Frederick J. Turner, of the University of Wisconsin. I have had the privilege of reading in manuscript the enlightening dissertation on *The Foreign Commerce of the United States during the Confederation*, by Professor Guy H. Roberts, of Bowdoin College.

GEORGE ELLIOTT HOWARD.

PRELIMINARIES OF THE REVOLUTION

PRELIMINARIES OF THE REVOLUTION

CHAPTER I

THE FRENCH WAR REVEALS AN AMERICAN PEOPLE

(1763)

THE Seven Years' War left Great Britain the most powerful state on the globe, and heralded the rise of an English nation in the western hemisphere. Scarcely any other military struggle has produced so many events of decisive interest to mankind. At Rossbach Frederick achieved for Prussia the headship of the German people, thus in effect laying the basis of the present imperial union; at Plassey Clive gained for England an empire in the East, whose borders are still expanding; at Quebec the victory of Wolfe won for the English race, though not finally for England, the political leadership of the western continents.

In a very real sense the year 1763 may be taken as marking the beginning of the American Revolu-

tion. The causes of that event are indeed far-reaching. They are as old as the colonial system itself. In many ways for more than a century, although they knew it not, the people of the thirteen provinces were being schooled and disciplined for their part in it. Almost in spite of themselves they were becoming moulded into one social body, an American society, which with the attainment of self-consciousness must inevitably demand a larger and freer, if not an entirely independent life. Their social consciousness was, in fact, stirred by the experiences of the war; and thereafter it was swiftly quickened and nourished by the blunders of the imperial administration.[1]

Looked at in this way, the revolutionary struggle reaches over a score of years, beginning with the peace of Paris and ending with the treaty of 1783. It comprises two well-defined stages. The first stage, closing with Washington's entrance upon command of the Continental army in July, 1775, is chiefly devoted to debate, to a contest of arguments, called out by the successive incidents of the halting ministerial policy, and occasionally interrupted by acts of popular or military violence. The second stage, except for the interval following the battle of Yorktown, is filled mainly with the agony of organized warfare, the clash of arms. With the history of the twelve years constituting the first of

[1] For the condition and organization of the colonies, see Greene, *Provincial America* (*American Nation*, VI.), chap. xii.

BRITISH POSSESSIONS
IN NORTH AMERICA, 1765
As defined by the Treaty of 1763,
Proclamation of 1763
and Royal Orders of 1764-1767
SCALE OF MILES
0 50 100 200 300 400
Proclamation Line of 1763
JURISDICTION CLAIMED
BY GEORGIA, 1764
NORTHERN-BOUNDARY OF WEST FLA.
BY ROYAL ORDER, 1767
NORTHERN BDRY. W. FLA. BY PROCL. 1763
PROCLAMATION
ANNEXED TO GEORGIA
BY PROCLAMATION, 1763
NORTH CAROLINA
SOUTH CAROLINA
GEORGIA
WEST FLORIDA
EAST FLORIDA
SPANISH
RESER
BY PRO
ATLANTI
TEXAS
(Part of Mexico)
Arkansas R.
Red R.
Sabine R.
Mississippi River
Tennessee R.
Alabama R.
Apalachicola R.
Savannah R.
Altamaha R.
Gt. Pedee R.
Natchitoches
Nacogdoches
Natchez
Mobile
Pensacola
New Orleans
St. Augustine
Charleston
Beaufort
Savannah
Wilmington
Cape Fear
Newbern
Cape Hatteras
GULF OF MEXICO
BAHAMA ISLANDS
TROPIC OF CANCER
CUBA
35°
30°
25°
20°
95°
90°
Longitude 85 West from 80° Greenwich
75°
70°
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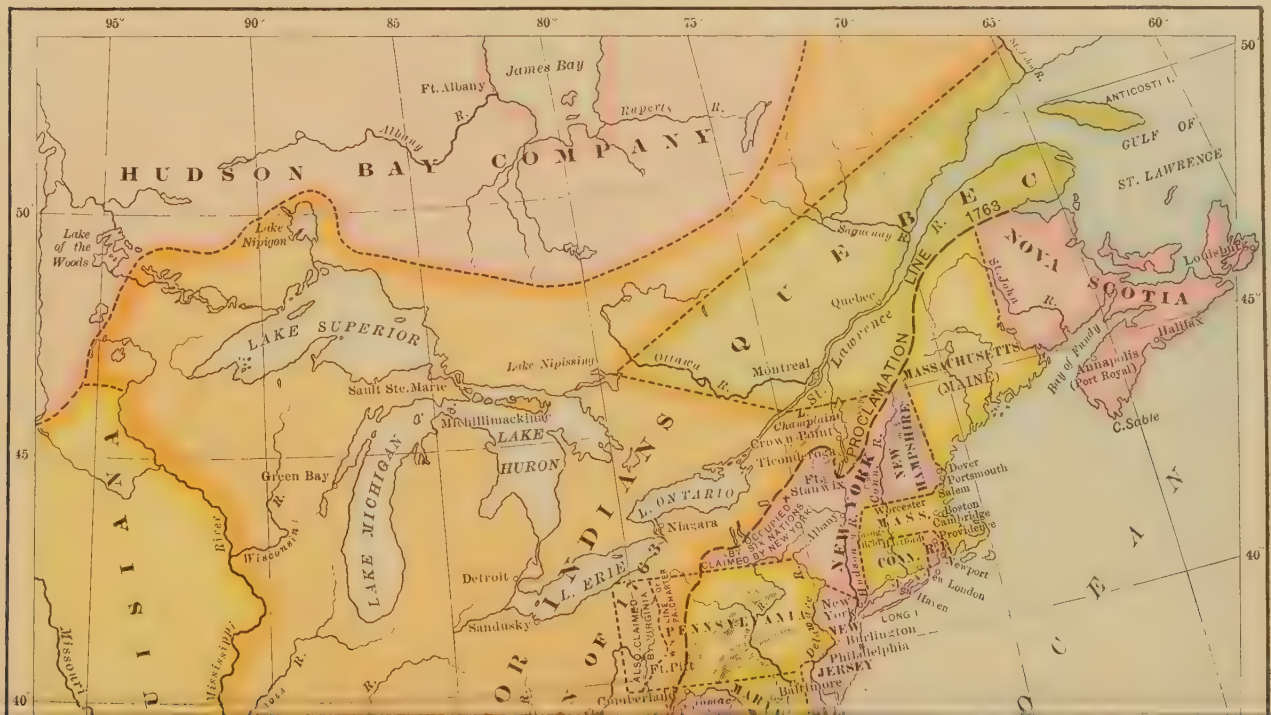

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LAKE HURON
LAKE MICHIGAN
Green Bay
Wisconsin R.
Detroit
Sandusky
L. ERIE
L. ONTARIO
Niagara
Ottawa R.
Montreal
Quebec
Saguenay R.
St. Lawrence
QUEBEC
1763
PROCLAMATION LINE
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Crown Point
Ticonderoga
Ft. Stanwix
Albany
Delaware R.
Hudson R.
NEW YORK
NEW HAMPSHIRE
MASSACHUSETTS (MAINE)
Dover
Portsmouth
Salem
Worcester
Boston
Cambridge
Providence
Hartford
Newport
New London
Haven
LONG I.
Burlington
Philadelphia
JERSEY
Baltimore
PENNSYLVANIA
Ft. Pitt
Cumberland
ALSO CLAIMED BY VIRGINIA
LINE OF PALCHARTER
OCCUPIED BY SIX NATIONS
CLAIMED BY NEW YORK
NOVA SCOTIA
St. John R.
Bay of Fundy
Annapolis (Port Royal)
Halifax
C. Sable
Louisburg
ANTICOSTI I.
GULF OF ST. LAWRENCE
OCEAN
Missouri
Mississippi
River

these stages, it is the purpose of this book to deal, only now and then, as in the case of the writs of assistance or the navigation laws, reaching back to events of earlier origin.

For the colonists the moral and social results of the French and Indian War were very great. In the first place, they were relieved from the dread of a foreign foe whose garrisons, stretching in irregular line from Quebec to New Orleans, had hemmed them in and checked their westward march. With the cession of the Floridas to England, the Spanish rival was thrust farther from their doors.[1] The fall of the French dominion, the weakening of the arm of Spain, and the failure of Pontiac had much lessened the peril from the red race. With the French or Spanish pioneers the English colonists had not feared to compete; nor did they feel themselves unequal to dealing with the Indian tribes. But there was always the anxiety lest the tomahawk and the scalping-knife might be raised through intrigues of a white enemy; and they deemed it just that the imperial government should protect them from the encroachments of a foreign soldiery.

That the presence of the French was believed to be a very real danger is revealed by abundant evidence covering the whole period from the surprise of Schenectady, in 1690, to the end of the

[1] For the French and Indian War, see Thwaites, *France in America* (*American Nation*, VII.), chaps. x.–xvi.

war.[1] Thus, in 1709, Jeremiah Dummer, who the next year began his term of service as agent of Massachusetts in London, "shows how early and passionate among the English colonies in America was the dread of the American power of France," declaring "that those colonies can never be easy or happy 'whilst the French are masters of Canada.'"[2] The effect of the French settlements, reports Lieutenant-Governor Wentworth, of New Hampshire, to the Lords of Trade and Plantations, in 1731, "is that the Indians are frequently instigated and influenced by them to disturb the peace and quiet of this province, we having been often put to a vast expense both of blood and treasure, to defend ourselves against their cruel outrages."[3] At the close of the war the American colonists found themselves freed from this long-standing menace.

Moreover, their imaginations were quickened and their mental horizon was expanded by the geographical results. For now, with the exception of the island of New Orleans, an imperial domain stretching from the Arctic to the Gulf, and from the Atlantic to the Mississippi, concealing illimitable riches within its mountains and its plains, was

[1] See Monseignat's letter to Madame de Maintenon, in Hart, *Contemporaries*, II., 337.

[2] Dummer, *Letter to a Noble Lord*, 4, quoted by Tyler, *Hist. of Am. Lit.*, II., 119.

[3] N. H. Hist. Soc., *Collections*, I., 227–230. Regarding the similar danger from the French on the Mississippi, see Spottswood, in Va. Hist. Soc., *Collections*, new series, II., 295.

thrown open to the industrial conquest of the English race. The enlarged view caused by this new environment is a fact of vast significance in estimating the forces underlying the contest for American independence. The colonist had grown in self-reliance, in mental stature. A greater destiny seemed to await him, and the friends of provincial subjection were already jealous of the possible consequences of his wider ambition. Before the war the Swedish traveller, Peter Kalm, writing in 1748, records the views of this class. It is "of great advantage to the crown of England," he says, "that the North American colonies are near a country, under the government of the French, like Canada. There is reason to believe that the king never was earnest in his attempts to expel the French from their possessions there; though it might have been done with little difficulty. For the English colonies in this part of the world have encreased so much in their number of inhabitants, and in their riches, that they almost vie with Old England." "I have been told" that "in the space of thirty or fifty years" they "would be able to form a state by themselves, entirely independent" of the mother-country.[1] For like reasons, in 1760, when peace seemed near at hand, the ministry were urged to yield Canada rather than Guadeloupe to the French. According to William Burke, a friend and kinsman of the celebrated statesman, Canada in French hands

[1] Kalm, *Travels*, I., 262–265.

was necessary to preserve the "balance of power in America." If "the people of our colonies," he insisted, "find no check from Canada, they will extend themselves almost without bounds into the inland parts. They will increase infinitely from all causes. What the consequences will be to have a numerous, hardy, independent people, possessed of a strong country, communicating little or not at all with England," he leaves to "conjecture."[1]

Replying to Burke's pamphlet, Franklin, then representing Pennsylvania in London, with characteristic eloquence and force presented the other side of the case in 1760. With Canada in English hands, "our planters will no longer be massacred by the Indians," who must then depend upon us for supplies; and in the event of another war with France we shall not be put "to the immense expense of defending that long-extended frontier." True, the colonists would thrive and multiply. In a century, at the present rate of increase, "British subjects on that side the water" would be "more numerous than they now are on this." But with right treatment their growing power would not affect their allegiance. They have different governments, laws, interests, and even manners. "Their jealousy of each other is so great, that however necessary a union of the colonies has long been, for their common defence and security against their

[1] Burke, *Remarks on the Letter Addressed to Two Great Men*, 30.

enemies, and how sensible soever each colony has been of that necessity," such a union has thus far been impossible. If not against the French and the Indians, "can it reasonably be supposed there is any danger of their uniting against their own nation, which protects and encourages them, with which they have so many connexions and ties of blood, interest, and affection, and which, it is well known, they all love much more than they love one another?" While "the government is mild and just, while important religious and civil rights are secure, such subjects will be dutiful and obedient. *The waves do not rise but when the winds blow.*" On the other hand, nothing is more likely to render "substantial" the "visionary danger of independence" than the heartless exposure of the colonists again to the "neighborhood of foreigners at enmity" with their sovereign. Will they then "have reason to consider themselves any longer as subjects and children, when they find their cruel enemies hallooed upon them by the country from whence they sprung; the government that owes them protection, as it requires their obedience?" Should the ministry take this course, it "would prevent the assuring to the British name and nation a stability and permanency that no man acquainted with history durst have hoped for till our American possessions opened the pleasing prospect."[1] Pitt agreed with

[1] Franklin, *Interest of Great Britain Considered, with Regard to Her Colonies*, in *Works* (Bigelow's ed.), III., 83.

Franklin, taking a course consistent with broad statesmanship and generous humanism.

In another way the war had prepared the colonists for the approaching contest. They had gained military experience and become aware of their own military strength. Battling side by side with the British regulars against the veterans of France, they had won confidence in themselves. They had tested their own fighting capacity, and had learned the need of modifying European tactics and European methods to suit the exigencies of frontier warfare. Moreover, at the Revolution the colonies possessed some officers and men who had been trained in actual warfare.

Most significant of all the results of the war was its influence in forcing out the already nascent sentiment of social unity. Founded at different times, under separate charters, and for diverse motives, the American provinces were in fact thirteen distinct societies. Except for their allegiance to a common sovereign, they were in theory as independent as if they had been foreign states. They waged commercial and even physical war upon each other. Political, economic, and religious antagonisms hindered their healthier growth. Social isolation is the mark of colonial as well as of Hellenic history; and in the one case it was nearly as harmful as in the other. Its evils were early perceived; and for more than a century before the outbreak of the French war one finds occasional experiments,

plans, or opinions which give expression to the desire for a political union of all or a part of the colonies. Such, in 1643, was the New England Confederation, which, in spite of its defects, served well for a time the needs of its members.[1] Even the hated general government of Andros taught its adversaries an unintended lesson which bore fruit after many days.[2] The value of federation was suggested, while the arguments, the methods, and the spirit with which the policy of Grenville and Townshend was resisted were then anticipated.[3]

From this time onward, as population grew, business expanded, and the final struggle with France drew near, the need of a common colonial government was felt more and more keenly by thoughtful men.[4] As early as 1698 William Penn prepared "A brief and plain scheme how the English colonies in the North parts of America . . . may be made more useful to the crown and one another's peace and safety with an universal concurrence." Under the presidency of a royal commissioner a representative congress is to assemble at least once in two years. It is to be composed of two "appointed and stated

[1] Tyler, *England in America* (*American Nation*, IV.), chap. xviii.

[2] Andrews, *Colonial Self-Government* (*American Nation*, V.), chaps. xvi., xvii.

[3] Letter of "Phileroy Philopatris," *Colonial Papers*, 1683, December 14, quoted by Doyle, *Puritan Colonies*, II., 223.

[4] Greene, *Provincial America* (*American Nation*, VI.), chap. xi.

deputies" from each province; and its "business shall be to hear and adjust all matters of complaint or difference between province and province," including absconding debtors, extradition, commerce, and ways and means for securing the safety and united action of the colonies against the public enemies.[1] In the same year Charles Davenant, praising this "constitution," suggests the creation of a "national assembly" to exercise powers similar to those assigned by Penn to his "congress." "Though he advocated an exercise of the full power of the mother country over the colonies," says Frothingham,[2] "yet he urged also a principle constantly put forth by them; namely, that, in any government that might be established over them, care should be taken to observe sacredly the charters and terms under which the emigrants, at the hazard of their lives, had effected discoveries and settlements"; and "one of his liberal remarks is, that the stronger and greater the colonies grow, 'the more they would benefit the crown and the kingdom; and nothing but such an arbitrary power as shall make them desperate can bring them to rebel.'" A "Virginian," writing in 1701, criticises the schemes of Penn and Davenant, urging that the colonies ought to have, not an equal number of deputies in the general assembly, but a representa-

[1] *N. Y. Docs. Rel. to Col. Hist.*, IV., 296.

[2] Davenant, *Discourse on the Plantation Trade*, quoted in Frothingham, *Rise of the Republic*, 111.

tion better apportioned according to their respective numbers and resources.[1]

In 1722 Daniel Coxe, anticipating some features of Franklin's plan, recommended that "all the colonies appertaining to the crown of Great Britain on the northern continent of America, be united in a legal, regular, and firm establishment," under a "lieutenant, or supreme governour," and with a representative assembly for control of its finances.[2] Plans more favorable to the prerogative were also suggested from time to time, as by Robert Livingston in 1701, and by Archibald Kennedy in 1752.[3] Occasional congresses of governors and other officials for conference with the Indians likewise did something to extend intercolonial acquaintance and to kindle the slowly dawning perception of the essential solidarity of provincial interests throughout the continent.[4]

Finally, in 1754, the famous Plan of Union drafted by Franklin was actually accepted by the Albany convention. This constitution for a united American people, proposed by a representative convention, is a new and significant event in the history

[1] *An Essay upon the Government of the English Plantations*, 69, summarized by Frothingham, *Rise of the Republic*, 109–112.

[2] Coxe, *Description of the English Province of Carolana*, Preface.

[3] Livingston, in *N. Y. Docs. Rel. to Col. Hist.*, IV., 874; Kennedy, *Importance of the Friendship of the Indians*, 7–15, 38; Frothingham, *Rise of the Republic*, 116; part of the texts in *American History Leaflets*, No. 14.

[4] Frothingham, *Rise of the Republic*, chap. iv.

of political science.[1] Among its provisions are some far wiser than the corresponding ones in the Articles of Confederation, of which it is the prototype. It never became a law. In America it was rejected as allowing "too much to prerogative," and in England "as having too much weight in the democratic part."

The assemblies did well to decline an instrument which by one of its provisions, not in Franklin's original draft, would have yielded to Parliament the right to change their local institutions. Yet in its failure Franklin's plan was a lasting success. The educational value of an earnest debate on the great problem of American union, taking place simultaneously throughout the thirteen colonies, should not be underestimated. At the very outbreak of the war a problem, which thus far for a few leaders had possessed mainly a literary or speculative interest, had definitively entered the field of practical politics. Still the hope of federation would have to flower before it could yield actual fruit. The heart of the plain people had not yet been touched. This is what the war effected. The experiences of the war called into being a real though inchoate popular opinion regarding the social destiny of the English race in America—a rudimentary national sentiment which impending events would speedily force into full and unquenchable life.

Hitherto there had not been, and under ordinary

[1] Thwaites, *France in America* (*American Nation*, VII.), chap. x.

circumstances there could hardly be, much intercommunication. Travel was then a serious business. By stage, four days were needed to go from Boston to New York, and three days more to reach Philadelphia. Even the "flying-machine," put on the road in 1766, required two days for the trip between the last-named cities. The newspapers were few, dear, and scant of information. In fair weather, to spread news throughout the colonies took three weeks, and much longer than that in winter. Few of the wealthy or public men of the south had ever seen those of the north. The common people of one colony had the vaguest notions regarding their neighbors in another, and often their intense provincialism was mingled with bitter prejudices bred by earlier antagonisms or rivalries. The war in many ways broke down the barriers and got people to know each other. Legislatures were called upon to discuss the same or similar measures. Men from Virginia or Pennsylvania met those of Massachusetts or Connecticut in council or on the march and by the camp-fire, and they succored one another in battle. The money and troops sent to the north by the southern and less exposed colonies bred "mutual good-will," and the colonial officers "forgot" their "jealousies" in the contempt shown for them by the British subalterns. The private soldiers, too, resented the patronizing airs of the king's regulars.[1]

[1] Andrews, *United States*, I., 158; Weeden, *Econ. and Soc. Hist. of New Eng.*, II., 668.

Negatively, in still another way the colonies were being drawn together and apart from the British government. For it was precisely at this time that alarm was caused by the schemes of the ministry and the suggestions of governors like Shirley of Massachusetts, Bernard of New Jersey, and Dinwiddie of Virginia, for raising a war revenue on the colonies and overriding their chartered rights. In 1754, as later in 1756 and 1760, the "British ministry heard one general clamor from men in office for taxation by act of parliament."[1] The governors were ordered to provide for quartering troops on the colonists and for impressing carriages and provisions for their support.[2] Almost everywhere bitter disputes arose between the assemblies and the executive bodies. The proprietors of Pennsylvania selfishly declined to share with the people the burden of extra taxation, leading to a prolonged struggle, in which in 1760 the assembly was victorious. In Maryland a similar contest with the proprietor was carried on.[3]

Under Newcastle as the nominal head, suggests a recent English scholar, "the two ministers who were practically responsible for the disasters which brought Pitt into office were Halifax, as president

[1] Bancroft, *United States* (ed. of 1885), II., 408–418, 443–449, 529–533.

[2] See orders of 1758, in Hubert Hall, "Chatham's Colonial Policy," in *Am. Hist. Review*, V., 664.

[3] Black, *Maryland's Attitude in the Struggle for Canada* (*Johns Hopkins University Studies*, X., No. 7).

of the Board of Trade and Plantations, and Sir Thomas Robinson, as the departmental secretary of state. If we add to these military and naval advisers as pedantic as Ligonier and Anson, commanders such as Braddock and Loudoun, governors of the type of Shirley, and the whole crew of brigadiers and post-captains, attorneys-general, vice-admirals, and revenue officers, all prepared to take their cue from the sententious loyalty which pervaded the optimist despatches from Whitehall, we shall not be surprised if 'the just grievances of his Majesty's loyal and faithful subjects' waited in vain for redress."[1] Nor need we wonder if a nagging and hectoring policy, just when there was supreme need of conciliation, should have aided in awakening the social consciousness of America.

Governor Shirley, indeed, in 1755, did not sympathize with the "apprehensions" that the colonies "will in time unite to throw off their dependency upon their mother country, and set up one general government among themselves." Their different constitutions, clashing interests, and opposite tempers made "such a coalition" seem "highly improbable." "At all events, they could not maintain such an independency without a strong naval force, which it must forever be in the power of Great Britain to hinder them from having"; and he makes the sinister suggestion, that "whilst his

[1] Hubert Hall, "Chatham's Colonial Policy," in *Am. Hist. Review*, V., 664.

majesty hath seven thousand troops kept up within them, with the Indians at command, it seems easy, provided his governors and principal officers are independent of the assemblies for their subsistence and commonly vigilant, to prevent any step of that kind from being taken."[1] Others had a keener vision. In the same year John Adams, then a village school-teacher, believed that "if we can remove the turbulent Gallicks, our people, according to the exactest calculations, will in another century become more numerous than England itself. Should this be the case, since we have, I may say, all the naval stores of the nation in our hands, it will be easy to obtain the mastery of the seas; then the united forces of all Europe will not be able to subdue us. The only way to keep us from setting up for ourselves is to disunite us."[2]

Already, in 1730, Montesquieu had prophesied that because of the laws of navigation and trade England would be the first nation abandoned by her colonies.[3] Not long thereafter, in his memoirs, Argenson predicted that the English colonies in America would sometime rise against the mother-country, form themselves into a republic, and astonish the world by their progress.[4] In 1750,

[1] Shirley to Sir Thomas Robinson, August 15, 1755, in Bancroft, *United States* (10 vol. ed.), IV., 214.

[2] Adams, *Works*, I., 23.

[3] Montesquieu, "Notes sur l'Angleterre," in *Œuvres* (ed. of 1826), VIII., 452.

[4] Argenson, *Pensées sur la Réformation de l'État*, I., 55, 56.

twenty-five years before Washington had begun to favor independence, Turgot had likened colonies to fruit which clings to the parent stem only until ripe, and predicted that what Carthage once did "America will sometime do."[1] On learning of the terms of the treaty of 1763, Vergennes, then French ambassador at Constantinople, said that "the consequences of the entire cession of Canada are obvious. I am persuaded England will ere long repent of having removed the only check that could keep her colonies in awe. They stand no longer in need of her protection; she will call on them to contribute toward supporting the burdens they have helped to bring on her; and they will answer by striking off all dependence."[2]

The population of the colonies was of first-rate quality for nation-building. The basis was of Anglo-Saxon stock. The New England people were almost pure English, with slight intermixture of Scotch-Irish and other elements. The Scotch were numerous, notably in New Hampshire and North Carolina. There were French Huguenots, particularly in South Carolina, a few Swedes in Delaware, Dutch in New Jersey and New York, while perhaps a third of the inhabitants of Pennsylvania were Germans. According to the most careful estimate, the thirteen colonies in 1760 had a total

[1] Stephens, *Turgot*, 165.

[2] Vergennes, as quoted in Bancroft, *United States* (ed. of 1885), II., 564.

population of about 1,600,000; 2,000,000 in 1767; 2,200,000 in 1770; 2,600,000 in 1775; 2,800,000 in 1780.[1] In 1763, therefore, the whole number of souls was not far from 1,775,000. Of this number about 360,000 were negroes, slave and free, of whom more than three-fourths were south of Pennsylvania.

In 1775 Massachusetts had about 335,000 inhabitants; Pennsylvania 300,000; New York 190,000; North Carolina over 265,000; and Virginia 450,000, of whom one-third were blacks. The colonial population was doubling itself in twenty-three years, and it was very largely rural. As in the Old World, the tide of migration to urban centres was only beginning. In 1763 there were but four towns of considerable size in the country: Boston and Philadelphia[2] each with about 20,000, New York with perhaps 12,000, and Charleston with 9000 persons. Baltimore may have had 5000, Providence 4000, and Albany 3000. Nearly five per cent. of the colonial population was then urban; whereas, by the census of 1900, over forty per cent. of the people of continental United States dwell in towns of at least 2500 inhabitants.

At the beginning of the Revolution servants by indenture were still being advertised for sale. These included free persons, whom necessity forced into

[1] Dexter, *Estimates of Population in the American Colonies*, 50; Bancroft, *United States* (ed. of 1885), II., 390.

[2] See estimates for 1759 by Burnaby, *Travels* (ed. of 1775), 76, 133; Lecky, *England*, III., 303, 307.

temporary bondage, as well as banished convicts.[1] Thus, in 1753, it was announced that the *Greyhound* had arrived at the Severn, Maryland, "with 90 persons doomed to stay seven years in his Majesty's American plantations." Two years later the same newspaper informed the public that "more than 100 seven-year passengers have arrived at Annapolis." Criminals were transported to the same colony as late at least as 1774.[2] The fact is enlightening. The propriety of receiving the foul harvest of the London prisons seems scarcely to have been questioned by the colonists. The slight progress made in the knowledge of social as well as economic laws should never be forgotten in trying to understand the origin and long toleration of British colonial policy.

[1] Weeden, *Econ. and Soc. Hist. of New Eng.*, II., 520, 695.

[2] *Boston Gazette*, May 8, 1753, and July 10, 1755. Cf. Butler, "British Convicts Shipped to American Colonies," in *Am. Hist. Review*, II., 29, 30.

CHAPTER II

THE BRITISH EMPIRE UNDER GEORGE III

(1760–1775)

AT the close of the French and Indian War the British Empire comprised the united kingdom of England, Wales, and Scotland; the dependencies of Ireland, Man, and the Channel Islands; the sea fortress of Gibraltar and other stations; the Asiatic possessions; and the colonies in America. Together England, Wales, and Scotland had a population of about 8,500,000. Since the union in 1707 Scotland had enjoyed full commercial and political equality with England, and already she was becoming somewhat reconciled to the loss of independent nationality. Ireland, with perhaps 3,500,000 people, was a "satrapy" frightfully misgoverned. There the seeds of rebellion were already sown, and before the century was out they were to bear their own proper fruit. "Ireland," says a modern English historian, "was absolutely subject to Britain, but she formed no part of it, she shared neither in its liberty nor its wealth." The forms of national life to her were a mere sham, and her people were ruthlessly exploited for the benefit of an

arrogant and greedy Protestant oligarchy. In "all social and political matters the native Catholics, in other words, the immense majority of the people of Ireland, were simply hewers of wood and drawers of water for Protestant masters."[1] The Irish were excluded from the trade privileges enjoyed by Scotchmen and Englishmen: a heavy duty was laid on their woollen cloth; the trade in linen, one of their most important manufactures, was hampered; and they were forbidden to raise tobacco. Thus, in the interest of the colonies and her Scotch and English neighbors, Ireland was hindered from developing even her meagre natural resources. Poverty, misery, and social anarchy prevailed.

On the other hand, the prosperity which England enjoyed had for near half a century been unbroken. During the long interval of peace under Sir Robert Walpole (1721–1742), industry had received a mighty impulse to which it still responded. The colonies flourished through the "salutary neglect" of the mother-country. At home land rents had advanced fifty per cent., and scientific methods of agriculture and stock-breeding were being tried with good results.[2] The navigation acts, originally designed to transfer the monopoly of the carrying trade from Dutch to English bottoms and to control the market for colonial products, seemed justified by the vast increase in the volume of commerce.

[1] Green, *Hist. of English People*, IV., 263.
[2] Cunningham, *English Industrial History*, chap. viii.

During the reign of George II. exports had nearly doubled; and between 1760 and 1774, notwithstanding an unwise change in colonial policy, they grew from £14,693,270 to £17,128,029.[1] Among the nations of the world commercial and maritime supremacy already belonged to Great Britain.

In population and wealth the great towns were advancing with rapid strides. By 1763 London had not less than 650,000 inhabitants. Bristol, with about 100,000, had trebled its numbers since Charles II.; while Norwich came next with some 60,000 souls. Furthermore, there were signs of the coming industrial era in the rise of new trading and manufacturing centres. Liverpool, with over 30,000 people, had "become indisputably the third port in the kingdom, and it was soon prominent beyond all others in the slave-trade." Other towns had grown with even more extraordinary speed. Birmingham now had at least 30,000; Newcastle 40,000; Manchester, excluding the suburbs more than 45,000; while the whole population of Lancashire had risen from about 166,000 in 1700 to 297,000 in 1750.[2] The future gave fair promise of great wealth. To be sure, the war had raised the national debt from near £72,000,000 to over £139,000,000,[3] but with prudent management it would scarcely become a serious burden for the growing fiscal strength of the realm.

[1] Craik, *Hist. of Commerce*, II., 202; III., 67.
[2] Lecky, *England*, VI., 213–215.
[3] Adam Smith, *Wealth of Nations* (ed. of 1896), II., 463.

The government of the kingdom was vested in the crown and Parliament. It was, in fact, a government of two powers, for Montesquieu's famous theory of checks and balances—based mainly on his view of the English constitution — was not real. He distinguishes three functions of government—the executive, the legislative, and the judicial—each of which should be exercised by a separate authority.[1] He may have been led to this conclusion by a consideration of the fact that the Act of Settlement (1701) had secured the independence of the judges, who could no longer be removed from office without the address of both houses of Parliament. But in fact the courts did not exercise a distinct governmental function: their powers were mixed — partly legislative and partly executive. English "political ideas were not reconcilable with the existence of three powers of government. Parliament, it is true, made the law, but so did the courts in their power of deciding concrete cases. The laws also were enforced by authorities which at the same time administered justice."[2]

Moreover, even the executive and legislative functions were not exercised exclusively by separate agencies. Since the reign of William III. the theory of government by responsible ministers with seats in Parliament had existed; and since George I. the members of the cabinet were selected in the king's

[1] Montesquieu, *Esprit des Lois*, book xi., chap. vi.
[2] Goodnow, *Politics and Administration*, 12.

name by the prime-minister, who was called to office directly by the crown. Already the right of members of the Commons to ask questions of the ministry on matters of public policy showed that the theory of responsibility was becoming a reality. Under normal conditions, the time would soon come when through the king's ministers the House of Commons would virtually govern the state.

The normal course of development was checked for a season through the character of the new king. The accession of George III. in 1760 marks the beginning of a retrogressive movement in the history of the English constitution. From the start, setting himself against the principle already established that the sovereign shall act only through responsible ministers, the king resolved to govern as well as reign. The experiment was in the highest degree perilous; for the maxim "the king can do no wrong" holds good only so long as he acts not at all of his own motion. George was wretchedly educated, most unfortunate in such training as he had received. Under the influence of his mother, the ambitious princess dowager of Wales, and his groom of the stole, Lord Bute, he had developed notions of royal prerogative which entirely unfitted him for his duties as a constitutional king. According to Lord Waldgrave, at one time his governor, he was "full of princely prejudices, contracted in the nursery, and improved by the society of bed-chamber women and pages of the back-stairs." In his youth his

mother had repeatedly said to him, "George, be king." Following her counsel, as May says, he "came to the throne determined to exalt the kingly office; and throughout his long reign he never lost sight of that object."[1]

Though the judgment is perhaps not too emphatic that the third George "had a smaller mind than any English king before him save James the Second," and that "his only feeling towards great men was one of jealousy and hate,"[2] yet he possessed a sturdy character which for good or ill was sure to leave a lasting mark on the history of his country. For several reasons he was favorably contrasted with his ancestors. In speech, feeling, and habits the first two princes of the house of Hanover were Germans, while George III. was an Englishman. "Born and educated in this country, I glory in the name of Briton," are the words which his own hand added to the draft of his first speech to Parliament.[3] His private life was simple and decorous. He exhibited the domestic virtues in an eminent degree. He was a good son, a faithful husband, a conscientious father, a devout and punctilious churchman. He loved to mingle with the people and to greet kindly the children whom he met on his walks. He was morally brave, and his remarkable physical courage

[1] Waldgrave, *Memoirs* (ed. of 1821), 63; Albemarle, *Memoirs of Rockingham*, I., 3; May, *Const. Hist. of Eng.*, I., 23.
[2] Green, *Hist. of English People*, IV., 201.
[3] Rose, *Correspondence*, II., 189.

stood more than one severe test during his reign. In addition he had a firmness of will, a tenacity of purpose, which might degenerate into obstinacy—a very dangerous gift for a prince of small intellect, inheriting vast and varied sources of influence and power.[1]

If George III. was a good man, he was decidedly a bad ruler. "It may be said without exaggeration that he inflicted more profound and enduring injuries upon his country than any other modern English king. Ignorant, narrow-minded, and arbitrary, with an unbounded confidence in his own judgment, and an extravagant estimate of his prerogative, resolved at all hazards to compel his ministers to adopt his own views, or to undermine them if they refused, he spent a long life in obstinately resisting measures which are now almost universally admitted to have been good, and in supporting measures which are as universally admitted to have been bad."[2] When he ascended the throne England was still in the hands of a Whig oligarchy which had controlled it for almost half a century. A few great families dominated Parliament and enjoyed a monopoly of pensions, honors, and preferments. While there was still danger from the Young Pretender, the Tories were silenced. Pitt alone had made a breach in the solid Whig ranks, for he boldly proclaimed that he owed his place as

[1] Thackeray, *Four Georges* (ed. of 1891), 72; on his courage, Lecky, *England*, III., 14.

[2] *Ibid.*, III., 15.

war minister to the voice of the people. But the king detested the Great Commoner, whom he called a "trumpet of sedition," and he determined to build up a party of his own through appeal to the Tories, who since Culloden had already begun to lift their heads. Pitt was disgraced, and in 1762 the Earl of Bute, leader of "the king's friends," became first lord of the treasury.

The new prime-minister was unpopular as a Scot, hated for his arrogance, and utterly devoid of statesmanlike qualities. His rise had been rapid. In thirteen months he passed from the stole through a series of honors to the head of the cabinet. "His sudden elevation resembled that of an Eastern vizier, rather than the toilsome ascent of a British statesman."[1] But in calling his favorite to office the king was in reality taking the first step towards the establishment of his own personal rule. He was, in fact, imitating the dangerous policy of Edward II. and the first two Stuarts. With steady persistence he strove to create and then to master the Whig factions. In 1770 his victory was complete. For twelve years thereafter, in the name of Lord North, the king virtually governed the realm; and he did not drop the reins until his hand was forced by the loss of America, whose rebellion his fatuous course had done most to provoke.

To accomplish his purpose the king did not scruple to employ every questionable device known

[1] May, *Const. Hist. of Eng.*, I., 31.

to the politics of that corrupt age. Although Sir Robert Walpole may not have been the author of the cynical maxim "Every man has his price,"[1] bribery flourished during his rule, but perhaps in no greater degree than under the ministries which followed. The low tone of public morality is strikingly revealed by the attitude of Pitt. Ostentatiously pure in his own methods, scorning to give or to take a bribe, he hesitated neither to share the government with Newcastle — past-master of the arts of political corruption—nor to advance his own measures through his colleague's sinister skill. "I borrow the Duke of Newcastle's majority," he said, "to carry on the public business."

There is a sharp contrast between the private and the public ethics of George III. Pious churchman though he was, he resorted to bribery in nearly every form to buy support for his policy. Gold, pensions, and places were freely used to reward his friends or to purchase votes in Parliament, while those who voted contrary to his wishes were punished by having their honors, offices, or emoluments taken away. According to Horace Walpole, Lord Bute's unpopular preliminaries of peace were carried in 1762 by deliberate bribery. Through Henry Fox, who had been intrusted with the "management of the house of commons," a "shop was publicly opened at the Pay Office, whither the members flocked, and received the wages of their

[1] Morley, *Walpole*, 127.

venality in bank-bills, even to so low a sum as two hundred pounds for their votes on the treaty. Twenty-five thousand pounds, as Martin, Secretary of the Treasury, afterwards owned, were issued in one morning; and in a single fortnight a vast majority was purchased to approve the peace."[1] The same genial writer bears testimony to the naïve and unblushing methods of corruption practised by Henry Fox. Under Bute he wrote a letter to Walpole offering to appoint the latter's nephew, Lord Orford, to the rangership of St. James's and Hyde parks, saying: "If he does choose it, I doubt not of his and his friend Boone's hearty assistance, and believe I shall see you, too, much oftener in the House of Commons. This is offering you a bribe, but 'tis such a one as one honest, good-natured man may, without offence, offer to another." Walpole declined the bargain, and in consequence for several months he was deprived of payments due him in the exchequer.[2]

There is no doubt that the king himself sometimes suggested such disgraceful traffic. On October 16, 1779, he wrote to Lord North, "If the D. of Northumberland requires some gold pills for the election, it would be wrong not to give him some assistance." To the same minister on March 1, 1781, he wrote: "Mr. Robinson . . . sent me the list of speakers last night, and the very good majority. I have

[1] Albemarle, *Memoirs of Rockingham*, I., 127, 128; Walpole, *Memoirs of George III.*, I., 157. [2] *Ibid.*, I., 168–171.

this morning sent him 6,000*l* to be placed to the same purpose as the sum transmitted on the 21st of August."[1] His corrupt use of secret pensions became a shameful abuse. "A bribe," declared Lord Halifax, "is given for a particular job; a pension is a constant, continual bribe. The jobbers are only a sort of day-labourers: but pensioners are domestic servants, hired to go through all the dirty business of the House."[2] Thus, early in the reign, "Rose Fuller—who had been a staunch whig —was bought off by a secret pension of 500*l*. The cause of his apostasy was not discovered till after his death."[3] Furthermore, there were various indirect means of corruption. Lotteries, contracts, and loans were thus freely employed in the purchase of influence or votes. In 1763 Bute contracted a loan for £3,500,000, at an extravagant rate of interest, and distributed the shares among his friends. The scrip at once rose to a premium of eleven per cent. In this instance the wholesale bribery of members of Parliament cost the country £385,000; while in 1781, through Lord North's iniquitous loan of £12,000,000, the people lost in excessive interest £900,000, one-half of which found its way into the pockets of members of the House of Commons.[4]

[1] Donne, *Correspondence of George III.*, II., 286, 362.
[2] Cobbett-Hansard, *Parl. Hist.*, XI., 522.
[3] May, *Const. Hist. of Eng*, I., 296.
[4] *Ibid.*, 304, 305; Adolphus, *Hist. of Eng.*, I., 111; Cobbett-Hansard, *Parl. Hist.*, XV., 1305; XXI., 1334–1386; Wraxall, *Memoirs*, II., 90, et seq.; Albemarle, *Memoirs of Rockingham*, II., 436.

During the American Revolution and for many years afterwards the people of England were very imperfectly represented in the House of Commons. That body consisted of 558 members: 45 from Scotland and 513 from England and Wales. Of this last number, 417 were borough members, 92 county members, and 4 were members chosen by the universities. The existing system of "virtual" representation left out of account the great mass of the population There had never been any attempt systematically to apportion representation according to population or wealth. In theory each member of the Commons represented all parts of the kingdom, even of the empire. The franchise was restricted in various ways. In the counties only forty-shilling freeholders could vote, and many of these were controlled absolutely by the influence of the great landholders. The state of the borough representation was much worse. This is "the rotten part of our Constitution," said Lord Chatham in 1766. By common law the franchise was vested in the resident householders; but in practice for ages monstrous irregularities had been sanctioned. In a few places the franchise still belonged to the ratepayers, those paying "scot and lot"; in some towns it was vested only in those holding lands by burgage tenure; in several it was enjoyed only by those upon whom corporate powers had been conferred by royal charter; while in many "these different rights were combined, or qualified by exceptional conditions."

As a result, in many towns a few persons monopolized the franchise. "At Buckingham, and at Bewdley, the right of election was confined to the bailiff and twelve burgesses; at Bath, to the mayor, ten aldermen, and twenty-four common-councillors; at Salisbury, to the mayor and corporation, consisting of fifty-six persons." Where "more popular rights of election were acknowledged, there were often very few inhabitants to exercise them. Gatton enjoyed a liberal franchise. All freeholders and inhabitants paying scot and lot were entitled to vote, but they only amounted to seven. At Tavistock, all freeholders rejoiced in the franchise, but there were only ten. At St. Michael, all inhabitants paying scot and lot were electors, but there were only seven."[1]

The right of selecting places for the privilege of being parliamentary boroughs formerly belonged to the crown. As a rule, the honor was conferred upon the more important towns—those best able to grant aids for the king's service. In early days, according to Glanville, places were capriciously selected, even by the sheriff; and sometimes, notably under the Tudors, political reasons determined the choice. Moreover, no new parliamentary borough had been created since the Restoration. The result was remarkable. While flourishing cities like Birmingham, Liverpool, Leeds, or Manchester had no representation at all, small towns like Ludgershall

[1] May, *Const. Hist. of Eng.*, I., 266.

or Old Sarum, with scarcely any inhabitants, continued to return one or two members to Parliament. Such places were known as "nomination," "pocket," or "rotten" boroughs, and their representation was often bought and sold in the market. Some of these places had regular "brokers" who offered them to the highest bidder.[1] Sudbury publicly advertised itself for sale. In this way a great lord might actually send a number of members to the House of Commons. Thus the "Duke of Norfolk was represented by eleven members; Lord Lonsdale by nine; Lord Darlington by seven; the Duke of Rutland, the Marquess of Buckingham, and Lord Carrington, each by six. Seats were held, in both houses alike, by hereditary right."[2] According to Oldfield, "no less than two hundred and eighteen members were returned for counties and boroughs, in England and Wales, by the nomination or influence of eighty-seven peers; one hundred and thirty-seven were returned by ninety commoners, and sixteen by the government; making a total number of three hundred and seventy-one nominee members," or more than half the entire representation of the House of Commons.[3]

The condition of things in Scotland was even worse. In the entire kingdom there were not three

[1] Walpole, *Memoirs of George III.*, III., 112.
[2] May, *Const. Hist. of Eng.*, I., 267.
[3] *Ibid.*, 288, summarizing Oldfield, *Representative History*, VI., 285–300.

thousand voters; while even in 1831 the first two cities, Glasgow and Edinburgh, had each a "constituency of thirty-three persons."[1] Moreover, through the skilful use of patronage, the whole representation was controlled by the government.

Shocking as was the state of representation, it must be confessed that at the beginning of George III.'s reign no class of excluded persons clearly demanded the franchise. There were, indeed, signs that the wealthier and more intelligent among the unrepresented, particularly in the manufacturing and commercial centres, were growing weary of the corruption and selfishness of the ruling oligarchy, and were beginning to desire a voice in the government which they were called upon to support; but the ignorant, sodden masses were indifferent and inert. Public opinion as an organized institution was just arising. The press, its organ, was feeble and its freedom was abridged. There was no adequate popular discussion of public questions. The age of great petitions and monster mass-meetings was not yet.

Still, public opinion was already forming, and occasionally the voice of the people made itself heard. It exacted the unjust execution of Admiral Byng in 1757; it carried Pitt into the cabinet, and it sustained his war policy. It condemned the peace of Paris in 1763, and drove Bute from office.

[1] Hansard, *Parl. Debates*, 2d series, IX., 614, 615; 3d series, VII., 530.

The demands of the merchants were a powerful factor in securing the repeal of the Stamp Act and the Townshend revenue law. Public opinion supported John Wilkes in the long struggle (1763–1774), in which he maintained the liberty of persons against the abuse of general warrants, and defended the rights of constituents against the tyranny of the House of Commons. In at least seventeen counties public meetings were held in 1770 to support the electors of Middlesex, who thrice returned Wilkes to the Commons after his expulsion.[1] Popular sentiment likewise encouraged that statesman-like demagogue in the contest (1771) in which he won the liberty of reporting the debates of Parliament. Before the Revolutionary War the press, thus in part set free, had gained a position of real power such as hitherto it had never enjoyed. Near its close the wider use of public meetings, already noted, began to spread. In 1779–1780 the "freeholders of Yorkshire and twenty-three other counties, and the inhabitants of many cities, were assembled by their sheriffs and chief magistrates to discuss economical and parliamentary reform."[2]

In theory the more important rights and liberties of persons were safeguarded by Magna Charta, the Bill of Rights, and the other great statutes. These were generally regarded as "constitutional" or

[1] *Annual Register*, 1770, p. 58.
[2] May, *Const. Hist. of Eng.*, II., 126.

organic laws which Parliament could not repeal without violating the most profound sentiment of the nation. It was becoming more and more common to speak of the "British constitution" as an entity beyond the reach of parliamentary interference.

Yet the liberty of the subject was very far from being complete. Nonconformists and Roman Catholics still suffered under the harsh penal code of the seventeenth century, and could not even marry according to their own religious forms. By the intolerant Hardwicke act (1753) Catholics and dissenters alike — save only Jews and Quakers — against their consciences were forced to have their marriages solemnized before a minister of the established church and according to its rites. Until 1778 a Catholic priest was liable to perpetual imprisonment for conducting the worship of his church; a Catholic could not acquire land by purchase; and his child, if educated abroad, forfeited his inheritance to the next Protestant heir. The infamous Corporation and Test acts were in force until 1828; and until 1829 Catholics were excluded from both houses of Parliament.

Furthermore, while the weak, dependent, and helpless classes were treated by society with indifference or cruel oppression, they were exposed to the vagaries of an absurdly inconsistent and savage criminal code. Life was held cheaper than property. There were more than one hundred and

sixty capital offences, sixty-three being added to the code during the first fifty years of George III. Until 1808 picking a pocket for any sum greater than twelvepence was punishable by death. "On the other hand, it was not a capital offence for a man to attempt the life of his father; to commit premeditated perjury, even when the result was the execution of an innocent man"; or "to burn a house in which the incendiary had a lease, even though it was so situated as to endanger the lives of hundreds."[1] Until 1836, the rule which deprived a person accused of any capital crime except treason of the aid of counsel in his defence had been but slightly relaxed. By permission of the court, "in trials for felony a counsel now usually stood beside the prisoner, instructed him what questions to ask, and even himself cross-examined the witnesses, though he might not address the judge or jury unless a legal question had arisen."[2]

The condition of the prisons, as disclosed by Howard's researches, was horrible beyond belief. The highwayman was almost an English institution. An immense number of criminals were executed, always in public, and usually the executions were exhibitions of sanguinary cruelty. Sometimes men and women were done to death in "batches." The records of the Old Bailey for the twenty-three years

[1] Lecky, *England*, VI., 247.
[2] *Ibid.*, 252; Blackstone, *Commentarié*, IV., 27; Stephen, *Criminal Law*, I., 424.

between 1749 and 1772 show that one thousand one hundred and twenty-one persons were condemned to death; and the number of victims would have been much larger had the law been rigidly enforced. The brutalizing spectacle of the Tyburn processions was kept up until 1783; convicts were hanged in chains until 1834. So bloody and inconsistent was the criminal code that jurors refused to convict for the offence charged, preferring to perjure themselves in face of the clearest evidence of guilt; while humane persons, for like motives, hesitated to bring offenders to account. In fact, the administration of the criminal law in England had become almost as much demoralized as in France under Louis XV.

Practically, slavery did not exist in the British isles, although before the decision of Lord Mansfield in the Somerset case (1772) slaves might be landed and retained by their owners on English soil. On the other hand, slavery was allowed to flourish in the colonies. On moral or humane grounds there was no public sentiment hostile to the institution. A few enlightened persons like Granville Sharpe, Thomas Clarkson or William Wilberforce might raise their voices against the evil, but the public conscience was not yet stirred.

On the contrary, the slave-trade was zealously fostered as a legitimate and lucrative industry. Since the seventeenth century its encouragement had become a cardinal principle of imperial policy; and the restrictive legislation of the colonies was

frowned upon as an interference with the rights of British commerce. Until 1698 the traffic was carried on by chartered companies. In that year by act of Parliament it was thrown open to private traders.[1] It became "highly beneficial and advantageous to this kingdom, and to the plantations and colonies thereunto belonging." A new impulse was given to the business by the treaty of 1713, which secured to England a monopoly of the trade with the Spanish colonies, and gave the kings of England and Spain each one-fourth of the profits. Even so progressive a statesman as the elder Pitt made the encouragement of the slave-trade a "main object of his policy."[2]

In England Bristol, London, and especially Liverpool were foremost in the traffic; while their most active rivals were the great New England towns. The business was exceedingly profitable, and it was conducted on an enormous scale. Between 1733 and 1766 — besides the large number imported by the colonists—about twenty thousand negroes annually were brought into the continental provinces of North America by English traders. In the West Indies, relatively, the number was even greater. For instance, during the three years preceding 1762 the little island of Guadeloupe imported nearly 40,000 blacks;[3] and between 1752 and

[1] 9 and 10 William and Mary, chap. xxvi.
[2] Lecky, *England*, I., 547. Cf. Du Bois, *Slave-Trade*, 1–6.
[3] *Grenville Papers*, II., 12.

1762 not less than 71,115 were brought into Jamaica.[1] Moreover, the traffic—though attended by the most atrocious cruelty—was not prohibited in the colonies until 1807; and only in 1833 was slavery finally abolished throughout the British realm.

The picture of imperial growth seemed very bright. The withdrawal of France left Great Britain virtually mistress of the North American continent; at Plassey, in 1757, Clive laid the solid foundation of her East Indian sway; while in the Pacific and Indian oceans Captain Cook was about to claim a vast island empire in her name. In 1768 he raised the British flag on the shores of New Zealand and New South Wales; and in two later voyages he gained other new lands for his country in the southern seas. A period of expansion through conquest was thus followed (1768–1815) by an era of expansion through exploration and discovery scarcely second in importance to that of Elizabeth's reign.

The theory of the empire finds its clearest expression in the old colonial system, which presently will be examined. A broad distinction was made between the mother-country and the outside territories. The imperial government rested on the assumption that the colonies and dependencies existed primarily for the good of the parent state. They were to be made a source of England's political and military power, even at a considerable cost to themselves. In return they should have the pro-

[1] Macpherson, *Annals*, III., 403.

tection of the British flag, and be exempt from contributing directly to the imperial revenues. It "seemed fair to subordinate the economic interests of the colonies to the interests of the mother-country, so that they might help to increase the fund of wealth from which the expenses of the common defence were defrayed."[1]

Accordingly, the imperial government was exercised solely from England, and the administrative authority was vested mainly in the crown. The crown was the source of all land titles and of all charters, commercial or governmental. To the king belonged the prerogative of revising the acts of the colonial assemblies; and all the higher appointments in the civil or military service were made in his name. On the other hand, general legislative authority in the empire belonged to Parliament. So far as applicable, all English statutes in force at the time of the first colonization were commonly held to be valid in the colonies, and all new statutes were binding if the colonies were specially mentioned therein. Moreover, the colonist enjoyed the full advantages of the common law wherever courts competent for its administration were created. Yet Parliament had relatively a small share in the direct government of the empire; and this was in part due to the jealousy of the crown, which sometimes, as in the case of ecclesiastical matters, resented its interference.

[1] Cunningham, *English Industrial History*, 133.

During the century preceding the accession of George III the colonists had generally accepted the imperial theory without serious protest, and exhibited a steadfast loyalty to Great Britain. They had yielded to the king's prerogative, accepted his protection when granted, and freely admitted the right of Parliament to regulate their trade and manufactures. They had prospered amazingly. Under the stimulus of local self-government they had become the freest people in the world, and therefore the most sensitive to the encroachments of the central power. Of a truth, in the quality of their civilization they had in some vital respects far outstripped the mother-country. In political ideals the contrast between Great Britain and her colonies was very great. Unquestionably in the finer sense the political education of the American people was far superior to that of their brethren in the old home. The standard of political morality was much higher. In place of the moral torpor which prevailed in England and Scotland, there had been developed in the colonies an extreme sensitiveness in regard to personal and constitutional rights. Through active participation in the town-meeting, the county court, and the assembly, a fierce spirit of liberty had been fostered which could not be subdued through appeal to worn-out precedents born of lower ideals.

The contrast in the ideals of private ethics was not less striking. The moral tone of "high" society

in England was unspeakably coarse and vulgar. Some of the foremost statesmen of the age were steeped to the core in vice. Gambling, drinking, and raking were patrician recreations. Henry Fox deliberately encouraged his son Charles in a career of vice. Debauchery and prodigality were venial sins. "The Duke of Grafton, in 1768, was in the very depths of a scandal of which Junius took care that all the world should be cognizant; and in the course of that very year his Grace was unanimously chosen Chancellor for the University of Cambridge." Lord Sandwich, a violent enemy of the Americans, had shared with Wilkes in the foul revels of Medmenham Abbey; yet "he had already run a dead heat for the High Stewardship of the same educational body. The University was saved from the ineffaceable disgrace which would have attended his success by the votes of the country clergy," who favored Lord Hardwicke in his stead.[1]

On the other hand, observing foreigners were struck with the simplicity, virtue, and hospitality of American life. Compared with the orgies of the fine gentlemen of London, the excesses even of the Virginian cavaliers were but innocent gayety. There was little in common between the lives of such men and the stern morality of John or Samuel Adams; while the moral ideals of George III., prescribing gold pills for the Duke of Northumberland, compared with the stainless honor and lofty

[1] Trevelyan, *American Revolution*, I., 64, 65.

dignity of George Washington—risking all for his country without pecuniary reward—present a contrast of profound meaning for him who would grasp one of the determining conditions of the American Revolution.[1]

[1] See especially, Trevelyan, *American Revolution*, I., 28–99.

CHAPTER III

THE MERCANTILE COLONIAL SYSTEM (1660–1775)

THE primary cause of the American Revolution must be sought in the character of the old colonial system, which was based on political and economic theories generally accepted as valid in the seventeenth century, but which, nevertheless, were the fruit of ignorance and inexperience. Politically, colonies were then looked upon as "dependencies," not as integral and fully privileged members of the growing parent state. Economically, they were "possessions," subject to exploitation for the benefit of the people who remained at home. These doctrines found partial expression in two ways: politically in the subjection of the colonies to "prerogative"; economically in their subjection to the "laws of navigation and trade." In both ways the Englishman who became a colonist sank somewhat in the social scale. The enterprising men and women who bravely faced the perils and hardships of the savage wilderness, thereby extending the prestige and wealth of the British nation, were not intentionally rewarded therefor by

new political and economic privileges. On the contrary they were looked upon as having expatriated themselves, as having yielded some part of the constitutional and legal rights which they already possessed. If this seems strange to us now, it must not be forgotten that our vision has been sharpened by nearly a century and a half of experience. It is very enlightening to reflect that the present wise colonial policy of Great Britain was adopted only after the bitter discipline of the American war. Furthermore, even now the "provincial" does not entirely escape the social condescension of his insular kinsman.[1]

Of a truth, to determine what ought to be the relation of colonies to the mother-country was not at all an easy problem for the men of the seventeenth century. Practically, the choice seemed to lie between allowing them to set up for themselves as independent communities, after the manner of the daughter colonies of Hellenic cities, or of keeping them in a state of at least partial subordination, following the custom of other European states. To turn them adrift to shift for themselves would have seemed heartless and unjust to the colonists themselves; to recognize them as integral parts of the expanding nation, with the same status, the

[1] For the theories and practice of the colonial system in the seventeenth century, see Andrews, *Colonial Self-Government* (*Am. Nation*, V.), chap. i.; in the early eighteenth century, Greene, *Provincial America* (*Am. Nation*, VI.), chaps. ii.–v.

same rights and duties as before migration, appeared impractical on account of the distance—always a puzzling factor in the problem—while to place them in a position of virtual autonomy, under the merely nominal sovereignty of England, perhaps to be a heavy burden upon the exchequer rather than a source of revenue, though according to modern ideas, would have been deemed a course devoid of common-sense by a generation under the full sway of the mercantile dogma.

The result was an ill-defined policy, confusedly blending two utterly antagonistic principles formed under the influence of Spain, whose experience reached back a hundred years before the first colonies of England were planted. In "the first settlement of America the conception of a Spanish colony as an extension of Spain was mixed up with a different conception of it as a possession belonging to Spain."[1] But if unconsciously England accepted the Spanish theory, she did not thoroughly imitate the Spanish practice. Politically and economically her colonies enjoyed far more liberty than did those either of Spain, France, or Holland. "On some points," admits Leroy-Beaulieu, "England showed a liberalism unusual at that epoch."[2]

By the right of discovery, according to legal theory,[3] the title to England's American territories

[1] Seeley, *Expansion of England*, 62.

[2] Leroy-Beaulieu, *Histoire de la Colonisation* (4th ed., 1891), 119.

[3] Peters, in *U. S. Statutes at Large*, VII., 1–11.

belonged to the crown. From the crown, therefore, the colonists derived their charters and patents. They and their lands were spoken of indiscriminately as the crown's "possessions." They were placed in subjection to the "prerogative," that undefined "sovereign authority" against which already in 1628 Sir Edward Coke had protested;[1] to an authority, that is to say, which for Englishmen at home became more and more clearly recognized as "unconstitutional" with each step forward in the march of parliamentary liberty. All this was unfortunate; but it was not thought of as despotic by the people of that age. To them it seemed just that as possessions the colonies should be made fruitful to their owner. Economic equality, they fancied, might make the colonies a damage rather than a benefit to the mother-country. Such a policy would now be condemned as selfish and short-sighted. In the end it proved harmful to the colonies. Yet before the advent of the Physiocrats and Adam Smith, it was sanctioned by the best economic thought of Europe. Clearly the faults of the old restrictive system were due to "unconscious ignorance" and not to "conscious malice."[2]

Aside from the measures providing for its administration, the restrictive colonial system finds expression in three series of laws: (1) the acts of navigation, strictly so-called, intended to protect Eng-

[1] Creasy, *English Constitution* (15th ed.), 287.
[2] Cf. Beer, *Commercial Policy*, 9.

lish shipping against foreign competitors; (2) acts of trade, designed to secure to the English merchants a monopoly of colonial commerce; and (3) acts giving to English manufacturers a monopoly of the colonial market. The first two subjects, navigation and trade, are sometimes dealt with in distinct parts of the statute, as in that of 1660. In its motive the whole "restrictive system" was class legislation pure and simple, of which the English merchant and the English manufacturer were the beneficiaries. In their interest the system aimed to control the imports of the colonies from abroad; their exports to other countries; their traffic with each other; their carrying trade; and their manufactures. Indirectly, of course, the English people remaining at home might profit by the monopoly; but the gains were unequally distributed.

At the Revolution the three basic statutes of the seventeenth century were still in force. By the act of 1660,[1] (1) the importation of goods from any part of Asia, Africa, or America, whether British or foreign, is confined to English or colonial ships whereof the masters and at least three-fourths of the mariners must be English. (2) No commodities of foreign growth, production, or manufacture may be brought into England, Ireland, Wales, Guernsey, Jersey, or Berwick, in such English (or colonial) owned and built vessels, unless they come directly

[1] 12 Charles II., chap. xviii.; also summarized in Andrews, *Colonial Self-Government* (*Am. Nation*, V.), chap. i.

from the producing country or from the ports whence they are usually laden for transportation. (3) Foreign carriers are absolutely excluded from the colonial market whether shipping their own products or not. "Noe Goods or Commodities whatsoever," the act declares, "shall be Imported into or Exported out of" his majesty's possessions in Asia, Africa, or America except in English ships or ships built and owned in the plantations, "whereof the Master and three fourthes of the Marriners at least are English." (4) The coasting-trade is closed to foreigners, and no alien is permitted to be a factor or merchant in the colonies. (5) Furthermore, certain products are named in the act, later added to from time to time, and known as "enumerated articles," which may not be carried from the colonies, even in English ships, to any place other than to such English plantations or to England or Ireland. These articles are sugar, tobacco, cotton-wool, indigo, ginger, fustic, and other dyeing woods. "This affected the English sugar islands of the West Indies and the southern colonies, which were obliged to send their products to the overstocked English or colonial markets, more than it affected New England, whose great staples, lumber, fish, oil, ashes, and furs, were free to find their best market, provided only they were sent in English or colonial ships."[1] Naval stores were not as yet included.

This act, therefore, though by no means generous

[1] Chamberlain, in Winsor, *Narr. and Crit. Hist.*, VI., 7, 8.

in its motive, is not intolerable. The colonists share equally with Englishmen at home in the rich monopolies of ship-building and the carrying trade. According to an elaborate tariff of 1660, discriminating against aliens, they may import all foreign goods, and, with the exception of the enumerated articles, export their own products to foreign countries, paying thereon the same import or export duty as when shipped to or from England by subjects of the crown residing in Great Britain.[1] On the other hand, they have lost the benefit of competition: foreigners are no longer permitted to carry their own products to plantation ports. For a time at least Virginians felt it a grievance that they could no longer export their tobacco in Dutch ships; just as in England the cost of freight on European imports was raised.[2] Throughout the act colonial ships and colonial seamen are recognized as "English," a statute of 1662 clearing up any doubt which may have existed on that point.[3] Scotchmen, however, were not included until after the union in 1707; and "Ireland" seems to have been put in the law by mistake. Hence, in 1670, the shipment of enumerated goods from the colonies directly to Ireland was forbidden; and between 1696 and 1731 even non-enumerated articles could not be sent to that country except by way of

[1] 12 Charles II., chap. iv. [2] Cf. Ashley, *Surveys*, 311–313.
[3] 13 and 14 Charles II., chap. xi., § 6; Channing, *Navigation Laws*, 9.

England. Likewise, the navigation laws prohibited the direct exportation of goods from Ireland to the colonies, although in 1704 an exception was made in the case of linen.[1]

The enumeration of colonial products was prompted by a dual motive. The English merchant would thus gain a monopoly in the distribution of these goods, and the English manufacturer would secure a monopoly in the colonial supply of raw materials. Yet neither the merchant nor the manufacturer was satisfied with his advantage under the act of 1660. If now, after the model of the mediæval "staple" towns, England were made the sole place for supplying the plantations with European goods, a still richer middleman's profit would be put within the merchant's grasp, and the manufacturer would find a greater demand from the colonists for his finished product in exchange for their raw materials.

Such is the aim of the "second" navigation act passed in 1663.[2] The preamble significantly describes the people of his majesty's colonies as "Subjects of this His Kingdome of England"; and naïvely announces that the law is designed for "maintaining a greater correspondence and kindnesse betweene them and keepeing them in a firmer dependance upon" that kingdom "and ren-

[1] 22 and 23 Charles II., chap. xxvi., §§ 10, 11; 3 and 4 Anne, chap. viii. Cf. 3 George I., chap. vii., § 29; and chap. xxi., § 2; Beer, *Commercial Policy*, 40; Channing, *Navigation Laws*, 12.

[2] 15 Charles II., chap. vii.

dring them yet more beneficiall and advantagious unto it," by making England the "Staple not onely of the Commodities of those Plantations but alsoe of the Commodities of other Countryes and Places for the support of them." Accordingly, with the exception of salt for the fisheries of New England and Newfoundland, wines of the Western Islands, or Azores, servants, horses, and victuals from Ireland and Scotland, the direct import trade of the colonies in European goods is entirely cut off; while, as before, the export trade to all foreign countries is forbidden in the enumerated articles again mentioned in the statute. Other goods the colonist might, indeed, carry directly to Europe; but his vessel must then return empty unless he was willing to transship his cargo by way of an English port.

Some advantages accrued to the colonists in case of such a re-exportation—a part or the whole of the duty was usually returned. Indeed, the people of England complained that Americans could get certain goods, such as German or Dutch linens, cheaper than they themselves could obtain them. Furthermore, it is strongly urged by Ashley, accepting the view of Brougham, that England was the natural entrepôt for the exchange of colonial and European products, so that the restrictions on the direct trade imposed by the acts of 1660 and 1663 were not really a hardship. In the case of tobacco transshipped to Europe, he admits that the cost

of freight may have been increased, though if so it would be "borne to some extent by the continental consumer."[1] It seems to follow from this argument that the colonial consumer would have to pay the extra cost of freight on goods transshipped to him from Europe.

The intercolonial trade still remained free. To appropriate a part of the benefits of this was the next step in the development of the restrictive system. The law regarding the enumerated commodities had been evaded. As early as 1662 it appears that tobacco was being delivered to Dutch vessels at sea, shipped directly to the Dutch plantations, or carried to New England and thence reexported in Dutch ships to Europe. "Moreover the products sent through England had paid duties, and the illegal trader was thus enabled to undersell the English merchant in the European markets."[2] In admirable harmony with the spirit of the old colonial policy, the entire people of the plantations, guilty and innocent alike, were now to be punished for this offence. By the act of 1672, creating the famous "acute triangle" of trade,[3] the whole traffic in the enumerated articles between one plantation and another — whether the goods were intended for home consumption or not — is sub-

[1] Ashley, *Surveys*, 317, et seq. Cf. Brougham, *Inquiry into the Colonial Policy*, 246.

[2] Beer, *Commercial Policy*, 39; *N. Y. Docs. Rel. to Col. Hist.*, III., 44.

[3] 25 Charles II., chap. vii.

jected to a penalty. The trader, for instance, who will carry sugar from Jamaica to New England, or tobacco from Virginia to New York, must either render tribute at the place of shipment according to a tariff prescribed in the statute, or else give bond to unlade his cargo in an English port, there paying the usual duty before proceeding to his colonial destination. On some articles the duties were heavy—tobacco, for instance, paying one penny a pound and white sugar five shillings the hundredweight. In other cases the charges seem to have been designed only to secure a record of the clearance, entrance, or destination of cargoes; and as a matter of fact the colonists did not very seriously object to them.

It is, perhaps, not surprising that the restraint of American manufactures should be the next step in the expansion of the system. Before considering this, however, the enumerated articles demand further attention. The history of these commodities is very enlightening as to the effects of the mercantile theory.[1] According to that doctrine a monopoly of the colonial exports of raw materials would prove beneficial by encouraging English manufactures. The balance of trade would thus be secured, and the precious metals would come into the kingdom. "If England imported the raw materials from the colonies she could pay for the same in manufactures; the precious metals would

[1] See especially, Beer, *Commercial Policy*, 43–65, 91–106.

not be drained from England, but might even flow thither from the colonies. The question whether the balance of trade was unfavorable to both England and the colonies, regarded as a unit, affected the economists and statesmen but little. What they sought was a favorable balance for England alone."[1]

New articles, therefore, were enumerated from time to time. Thus in 1705 rice and molasses were put upon the list. The war of the Spanish Succession was then at hand. Accordingly naval stores were enumerated and bounties offered for their production. Copper and furs came next in 1722. Tobacco "formed one-half of all the colonial exports."[2] The enumeration with the excessive import duties did not in the end prove a serious injury to Virginia. There were compensations. The growth of tobacco in England—which at one time promised to become important—was prohibited; a much higher duty was laid upon the Spanish and Portuguese product; while the greater part of the charge on that of Virginia was returned on re-exportation, "between two-thirds and four-fifths" of the entire crop being thus carried to other countries. Nevertheless, the price fell—partly on account of over-production—and in 1733 the planters protested against the rate.[3]

[1] Beer, *Commercial Policy*, 43.

[2] 3 and 4 Anne, chap. v., § 12, chap. x., § 8; 8 George I., chap. xviii., § 22, chap. xv., § 24; Ashley, *Surveys*, 316.

[3] Ashley, *Surveys*, 316–319; Beer, *Commercial Policy*, 50, 51, citing *The Case of the Planters of Tobacco*.

The first effect of the enumeration of rice, the staple product of South Carolina, was to deprive that colony of her monopoly of the Portuguese market. Consequently the law was relaxed. In 1730 South Carolina and in 1735 Georgia were allowed to send rice directly to any port south of Cape Finisterre, provided it was exported in ships built or owned in Great Britain. For in this instance, apparently, the colonists were excluded from a share in the profits of carrying their own goods. "Immediately American rice regained control of its former market."[1] The enumeration of furs in 1722, though accompanied by a heavy reduction in the import duty, did not increase the supply for the English market. The trade was already passing rapidly into French hands; and "neither restriction nor favor" had much effect upon a business "bound speedily to disappear."[2] The placing of sugar and molasses on the list did not directly affect the continental colonies. It gave occasion, however, for the Molasses Act of 1733, which will be again referred to.

Equally instructive is the history of the bounty system. By the statute of 1705, already mentioned, renewed and supplemented by later acts, liberal premiums were granted on colonial masts, hemp, tar, pitch, and allied products sent to Eng-

[1] 3 George I., chap. xxviii., § 2; 8 George II., chap. xix.; Beer, *Commercial Policy*, 53.

[2] Ashley, *Surveys*, 315, 316; Beer, *Commercial Policy*, 57–62.

land; while in 1721 hemp and in 1722 all kinds of lumber were freed from English import duties.[1] A monopoly of these products, which the plantations might thus be stimulated to produce, would, it was hoped, create a steady market for English manufactures. To some extent the colonies were benefited by the experiment. The premium on indigo granted in 1748 was successful.[2] In the southern plantations tar and pitch were produced and exported in considerable quantities. Between 1714 and 1774, it is alleged, £1,609,345 sterling were paid in premiums on colonial goods carried to British ports.[3]

Yet in the main the bounty system was a failure. For their staple products—their fish, lumber, and ship-timber—the northern plantations found their best market in Spain, Portugal, and the West Indies. The bounty system proved to be a vain effort to draw them from this lucrative commerce into new industries for the sake of the mother-country. Moreover, the disputes arising with the navy board touching claims for bounty, and with the king's officers regarding the execution of the laws for the protection of the forests, were a constant source of bad feeling. It is impossible, concludes a careful writer, "to determine to what ex-

[1] 12 Anne, stat. 1., chap. ix.; 8 George I., chap. xii.; 2 George II., chap. xxxv.; 16 George II., chap. xxvi.; 24 George II., chap. lvii.; 31 George II., chap. xxxv.

[2] 21 George II., chap. xxx., § 1; 28 George II.. chap. xxv., § 1.

[3] *Rights of Great Britain Asserted*, 87.

tent the irritation of the New England woodsmen may have laid the foundation for the resentment which culminated in 1776"; but "so far as one branch of industry is concerned, the economic independence of New England was declared and maintained many years before the final rupture with Great Britain."[1]

Various circumstances favored the early rise of manufactures in the colonies. Everywhere there was plenty of iron, and the supply of fuel for smelting was unlimited. Wool for homespun and for a time beaver for hats could be found in abundance. The forests were filled with the best timber in the world for ship-building. Moreover, among the people were many skilled artisans from Europe, notably from Ireland, England, and France. But there was another cause more potent than even these natural conditions. The economic policy of Parliament had partially deprived the colonists of the means of importing the manufactures which they needed. The restrictive laws by interfering with the profitable foreign market had lessened the supply of ready money with which to make good the unfavorable balance of trade with England; besides, who could say when those laws might be more rigidly enforced.

On the other hand, the corn laws enacted during the reign of Charles II. had closed the English

[1] Lord, *Industrial Experiments*, 56, 87, 123, passim. Cf. Beer, *Commercial Policy*, 91–106; Channing, *Navigation Laws*, 16–19.

market to the staples which the colonists might have exchanged for manufactured goods. In the interest of the land-owner, "prohibitory customs duties were levied on agricultural products, such as rye, barley, peas, beans, oats, and wheat";[1] the importation of provisions, including beef, pork, bacon, and apparently butter and cheese, were prohibited; and a discriminating duty was laid on oil and blubber imported in colonial ships.[2] "Thus," concludes Beer, "New England, and later the middle colonies, not being allowed to exchange their normal products for England's manufactures, were forced to begin manufacturing for themselves."[3]

This unforeseen result was intolerable to the disciples of the mercantile theory. According to that theory the colonies were useful chiefly as consumers of English goods for which they were expected to supply the raw materials. Accordingly, having forced American manufactures into existence by one economic blunder, Parliament tried to destroy them by another. The woollen industry was attacked in 1699; the exportation of beaver hats of American production was forbidden in 1732; while in 1750 the manufacture of rolled iron and of steel was restrained.[4]

[1] Saxby, *British Customs*, cited in Beer, *Commercial Policy*, 74, 111–114. Cf. Lord, *Industrial Experiments*, 124–139.

[2] 18 Charles II., chap. ii.; 32 Charles II., chap. ii., § 9; 25 Charles II., chap. vii. [3] Beer, *Commercial Policy*, 75.

[4] 10 and 11 William III., chap. x., § 19; 5 George II., chap. xxii.; 23 George II., chap. xxix.

Such in character was the old restrictive system. Its triple monopoly of shipping, trade, and manufacture had the full and hearty approval of economic writers. Josiah Child—whose book was written in 1665 and first published in enlarged form in 1668—frankly lays it down "that all colonies, or plantations, do endanger their mother-kingdoms, of which the trades of such plantations are not confined by severe laws, and good execution of those laws, to the mother-kingdom"; and that in particular "New-England is the most prejudicial plantation to the kingdom of England."[1]

Joshua Gee, an adviser of the board of trade, "who is said to have advised an American stamp act by parliament," produced a book in 1729 whose spirit is entirely in harmony with that of the colonial system. To make the plantations more profitable to Great Britain, he would "strengthen" the navigation act and imitate the policy of Spain and other European states in preventing "their natural born Subjects from going upon such Manufactures as doe interfere with theirs at home."[2] In recognition of the soundness of Gee's doctrine a new edition of his work was brought out in 1767, just as the new revenue acts were being matured. John Ashley in 1741 pleads for a mitigation of the rigor of some of the laws affecting the colonies. Yet

[1] Child, *New Discourse of Trade*, 134, 135.

[2] Gee, *Trade and Navigation*, 48–53, 77. Cf. Bancroft, *United States* (ed. of 1885), II., 241.

his point of view is the same as that of his predecessors. If he is more humane, it is because lenity will render the plantations—those "junior Branches" of the empire — more profitable to the mother-country.[1] But in the works cited, neither Ashley nor Gee, as sometimes alleged,[2] appears to have advised the taxing of the colonies for revenue; although, had the duty imposed been lowered as Ashley suggested, and the molasses act of 1733 enforced, it would have become, in fact as well as in form, a revenue act.[3]

It may seem strange that for a century a system so selfish in motive and so false in principle should have been borne without more serious protest. The reasons, however, are not far to seek. The system as actually administered did not prevent the great material prosperity of the colonists; they had a commerce profitable to them, and they had a political relation of great significance. On the one hand, from England they got capital and credit; under the English law their property and civil rights were secured; their commerce was carried on under the protection of the British flag; and in some measure they were partners of Englishmen at home in the very monopolies which they endured. Indeed, it is believed that the exclusion of foreign

[1] Ashley, *Memoirs and Considerations*, 13–35, passim; pt. ii. (London, 1743), 96 and Preface.

[2] E. g., Scott, *Development of Const. Liberty*, 215–219.

[3] Ashley, *Memoirs and Considerations*, pt. ii., Preface, where a tax for revenue is discouraged; also 42.

competition in the carrying trade actually "stimulated ship-building and the shipping interest in the colonies."

Furthermore, the making of England the staple for the exchange of colonial and European goods was not a great hardship; for it is almost certain that the English middleman would have had the bulk of this trade without the aid of restrictive laws. Even the harsh restraint of manufactures was quietly accepted, because, as it turned out, investments in land and other enterprises were found more lucrative.[1] On the other hand, the colonists enjoyed local self-government and were relieved from contributing directly to the imperial revenues. They were expected to aid in their own defence; but because they "were not a part of the realm of England" they were not taxed to support the army when sent against a foreign foe. They shared more actively in the functions of political life than most of them could have done in the old home.

Why, then, can the old colonial system be regarded as the primary cause of the Revolution? Again the answer is near at hand. It was wrong in principle and degrading in motive. Such a régime of political and economic paternalism could not long be endured by a robust and liberty-loving people dwelling three thousand miles away from the seat of power. In American history as elsewhere the value of sentiments must not be overlooked. Psychic

[1] See especially Ashley, *Surveys*, 317–360.

causes are in the end more potent than material causes. Besides, the paternal system had always been the source of more or less irritation and discontent. Indeed, there is something misleading in representing the privileges permitted by it as "compensations." Were they not rights which in fuller measure the colonies, more justly looked upon as integral parts of the British nation, ought to have enjoyed without paying an extra price for them?

It must not be forgotten that in both of its aspects the colonial system was laxly administered. The prerogative was but fitfully enforced. The laws of trade were systematically evaded, although so far as the European traffic is concerned the amount of smuggling seems to have been less than is commonly supposed.[1] The failure during a century to make any serious effort to execute these laws in effect established a prescriptive right to such indulgence which could not be denied with safety. The molasses act of 1733, whose execution would have destroyed the most lucrative trade of the northern colonies, was a dead letter. It remained, nevertheless, a social menace. Who could say at what moment prerogative and Parliament might unite in its execution, or when it might be made in fact a revenue law?

This moment came at the close of the French and Indian War. Just as the American people were becoming aware of their real strength, faintly per-

[1] Ashley, *Surveys*, 336–360.

ceiving the great destiny which awaited them, the British ministry made the fatal resolve of rigidly enforcing the acts of navigation and trade and of depriving the colonists of those very "compensations" which thus far had enabled them quietly to endure the colonial system. What would be the reply of the American people?

CHAPTER IV

THE FIRST PROTEST OF MASSACHUSETTS (1761)

AFTER a century and a quarter of discussion the American Revolution is to-day clearly emerging as an event of first rate importance in social as well as political history. In that discussion the wrong point of view has often been taken. On the one hand the struggle has been looked upon as a war of liberation from a despotism imposed on the colonies as if through conscious malice; on the other as a needless revolt inspired mainly by a few hot-headed demagogues taking advantage of a blundering royal policy. The second error, which some American and many British writers have committed, is not less grave than the first; for the Revolution was indeed a movement for liberation, not from a consciously planned tyranny, but from a régime, economic and political, which was hampering the social growth of the colonies.

According to the usual definition, the American Revolution, unlike the French Revolution, is political and not social in character. It is not regarded as a struggle against class privilege. Yet in a very

real sense the old colonial régime treated the provincials as an inferior class. As dominions the colonies were in theory subjected to the rigor of the royal prerogative while the favored people who remained in England were being freed from it; as communities they were valued chiefly as feeders of British trade. A system so artificial and so humiliating could not long prevail with a proud and self-respecting people becoming aware of their strength. If the American Revolution was not a conscious social revolution, it was at any rate a struggle for free social expansion. "Of all events of English history," declares Seeley, "it is perhaps the American Revolution which has suffered most from the application of these wrong tests." It "is an event not only of greater importance, but on an altogether higher level of importance than almost any other in modern English history," for "it . . . called into existence a new state."[1]

The American Revolution is unique, not only for its significance, but also in its form and progress. Like the French Revolution it is dramatic. The action unfolds itself with epic precision: at each shifting of the scene the right actor takes his place. But no other revolution has from the start produced leaders so thoroughly disciplined by experience for its guidance: each action is explained by learned and skilful argument; more than twelve years are given up to debate before the first blow is struck.

[1] Seeley, *Expansion of England*, 142, 144, 147.

No other revolution is so instructive to the student of political science: the entire process of state building goes on before his eyes, and the reason for each step is clearly and exhaustively expounded by the builders as they proceed. For enduring quality, the forensic and constitutional literature of our Revolutionary epoch is not matched in the entire history of political struggle.

The speech of James Otis against the writs of assistance, if not the opening, was at any rate the prelude of the Revolutionary drama.[1] Previous to the close of the French war in America the acts of trade had brought no profit to the British treasury. The cost of maintaining the commercial system was enormous. During the sixty years between 1714 and 1774, on this account, including probably the support of the American fleet, the exchequer had paid out not less than £34,697,142 sterling, a sum greater, it is alleged, "than the estimated value of the whole real and personal property in the colonies."[2] Grenville discovered that the entire "revenue derived by England from the custom-houses in America amounted to between 1,000*l.* and 2,000*l.* a year; that for the purpose of collecting this revenue the English exchequer paid annually between 7,000*l.* and 8,000*l.*; and that the chief custom-house officers appointed by the crown had

[1] Cf. Tyler, *Lit. Hist. of Am. Rev.*, I., 30, et seq.

[2] *The Rights of Great Britain Asserted*, 82; Chamberlain, "The Revolution Impending," in Winsor, *Narr. and Crit. Hist.*, VI., 6.

treated their offices as sinecures, and by leave of the treasury resided habitually in England."[1] A vast amount of dutiable goods, both from Europe and the foreign West Indies, was continually being smuggled into the country, and the local officers either connived at the illicit traffic or were helpless to prevent it.

From the beginning of the French war there were ominous signs that a more rigid execution of the laws was resolved upon. Governor Shirley of Massachusetts is believed to have been influential in suggesting the new policy. In particular he led the clamor, elsewhere referred to, for raising a revenue on the colonies by act of Parliament.[2] During the war the colonial merchants, sometimes with French or Dutch passports or under flags of truce granted by the American governors, had kept up an active trade with the enemy in the sugar islands and even on the main land. At the suggestion of Halifax in 1756, and again in 1760 through Pitt's instructions, the governors were commanded to put a stop to the practice.

If this conduct of the colonial merchants was unpatriotic, it must be confessed that necessity afforded a plausible excuse. How else were they to contribute their share to the support of the war without the money gained from the West India

[1] Lecky, *England*, III., 333, citing *Grenville Papers*, II., 114; see also Grenville, *The Regulations Lately Made*, 57.

[2] See above, chap. i.

trade? They were willing to tax themselves heavily for that purpose; but when also, suggests an English critic of the British policy, they "were required to desist absolutely from all commercial dealings with their best customers, their good friends, the enemy, the sacrifice seemed too great even for their simple loyalty." Indeed, the alleged purpose of "starving" the French out of the West Indies is regarded by the same writer as a cause of the American rebellion.[1]

The machinery for the rigid administration of the commercial code was ample if zealously employed.[2] In England, since 1696, the Board of Trade and Plantations was exercising general authority under the Privy Council. This body worked mainly through the governors, who in their respective provinces were sworn to a faithful execution of the laws of trade and navigation.[3] Below the governor were the naval officer, the collector of customs, and the surveyor-general, besides the collectors and the surveyors and searchers for each port.[4] Originally prosecutions for breach of the trade laws were tried in the ordinary colonial courts of record, but juries were slow to convict. Hence, in 1697, separate

[1] Hall, "Chatham's Colonial Policy," in *Am. Hist. Rev.*, V., 666.

[2] The best accounts are Greene, *Provincial America* (*American Nation*, VI.), chap. xvi.; Beer, *Commercial Policy*, 123.

[3] 12 Charles II., chap. xviii.; supplemented by 7 and 8 William III., chap. xxii.

[4] Spotswood, *Letters*, I., 29; 7 and 8 William III., chap. xxii., §§ 5, 11.

admiralty courts for the colonies were created and these could act without a jury.[1] In England revenue cases were tried, not in the courts of admiralty, but in the court of the exchequer, where juries were employed.

But the most effective instrument in the prevention of illicit trade was the "writ of assistance" created during the reign of Charles II.[2] According to the late Justice Horace Gray — whose critical essay should be used with John Adams's report of Otis's speech—this warrant for the seizure of uncustomed goods appears to be derived from the ancient "writ of assistance" or "writ of aid" addressed to the sheriff from the court of exchequer; and it is "perhaps copied from the sheriff's patent of assistance."[3] By statute the writ is issued from the court of exchequer. It is general in form, authorizing the official in the day-time to search any vaults, cellars, warehouses, or other suspected places where he may suppose dutiable goods to be hidden, while ships lying in or near the port may thus be entered either by day or night. It is valid for an indefinite time, or until six months after the demise of the crown, and no "return" to the court of issue is required. In England this warrant was

[1] Washburn, *Judicial Hist. of Mass.*, 172; Chalmers, *Revolt*, I., 273–275.

[2] 12 Charles II., chap. xix.; confirmed by 13 Charles II., stat. 1, chap. i., and later acts; supplemented by 13 and 14 Charles II., chap. xi., § 5; and often re-enacted.

[3] Gray, *Writs of Assistance*, in Quincy, *Reports*, 395, et seq.

then in use; and there in practically the same form as under William III. it continued to be enforced for many years after the Revolution. Yet it is easy to see that so dangerous a power, especially in the hands of petty officials, was capable of serious abuse.

A statute of William III. had expressly enjoined that the same aid should be given to the custom-house officers in America as was required by law to be rendered in England.[1] But for more than half a century such writs were not used in the colonies. According to Hutchinson, "the collectors and inferior officers of the customs, merely by the authority derived from their commissions, had forcibly entered warehouses, and even dwelling houses, upon information that contraband goods were concealed in them. The people grew uneasy under the exercise of this assumed authority, and some stood upon their defence against such entries, whilst others were bringing their actions in the law against the officers, for past illegal entries, or attempts to enter."

Governor Shirley put himself for a time equally in the wrong: as civil magistrate he "gave out his warrants to enter"; but learning that such a course was illegal, he directed the "officers to apply for warrants from the superior court; and, from that time, writs issued, not exactly in the form, but of the nature, of writs of assistance issued from the

[1] 7 and 8 William III., chap. xxii., § 5.

court of exchequer in England."[1] The truth of this statement is confirmed by the documentary evidence. In June, 1755, the superior court, Chief-Justice Sewall presiding, issued the first of these memorable writs to Charles Paxton, surveyor of the port of Boston. Similar authority was presently conferred upon other officers.[2] Many seizures were made. "The third part of the forfeiture of molasses which belonged to the province amounted before 1761 to nearly five hundred pounds in money."[3] Informers were rewarded for secret information, and popular feeling was kept in a state of continual irritation.

The death of George II., October 25, 1760, brought matters to a crisis, for in six months the validity of all existing writs would cease. Chief-Justice Stephen Sewall, who doubted the legality of the writs, died just after the new governor, Francis Bernard, arrived in Boston (August 2), bringing instructions to "be aiding and assisting to the collectors and other officers of our admiralty and customs in putting in execution" the laws of trade. George III. was proclaimed in Massachusetts December 30. On the same day Thomas Hutchinson, who already held the posts of councillor, judge of probate, and lieutenant-governor, was

[1] Hutchinson, *Hist. of Mass. Bay*, III., 92, 93.
[2] Gray, in Quincy, *Reports*, 402, et seq.
[3] Chamberlain, "The Revolution Impending," in Winsor, *Narr. and Crit. Hist.*, VI., 12.

commissioned as chief justice of the superior court, and on January 27, 1761, he took his seat on the bench in Middlesex.

James Otis, the elder, had been promised the first vacancy on the bench by both Shirley and Pownall; but, according to John Adams, Hutchinson was appointed by Bernard "for the very purpose of deciding the fate of the writs of assistance, and all other causes in which the claims of Great Britain might be implicated."[1] This statement is scarcely sustained by the evidence. Hutchinson was brought forward for the place by his friends; and at the time of his commission application for a renewal of the writs had not yet been made as Adams alleges.[2] Yet it can hardly be doubted that the question of their legality was already a matter of earnest discussion. The petition of the Boston merchants for a hearing against the writs, and the memorial of Lechmere, the surveyor-general, to be heard in reply, were filed in February, 1761. On the 24th the case of Charles Paxton, who sought a new warrant, came before the superior court sitting under the presidency of Chief-Justice Hutchinson, in the council chamber of the old Town House in Boston. For the writs appeared the attorney-general, Jeremiah Gridley, and the merchants were represented by Oxenbridge Thacher and James Otis.

No full report of this famous trial exists. Our

[1] Adams, *Works*, X., 183, 247, 280.
[2] Gray, in Quincy, *Reports*, 409–411.

knowledge of it is derived almost wholly from John Adams's notes taken at the first hearing,[1] together with his later and more extended report,[2] and the letters addressed by him to William Tudor fifty-seven years after the event.[3] Gridley, the foremost lawyer of Massachusetts, confined himself closely to proving the technical validity of the writs and the legality of their issue by the superior court, not touching upon the broader aspects of the case. He "argued," says Adams, "with his characteristic learning, ingenuity, and dignity," all depending, however, on the "if the Parliament of Great Britain is the sovereign legislature of all the British empire."[4] It is true, Gridley admitted, that the "common privileges of Englishmen are taken away in this case"; but it is justified by necessity—the "benefit of the revenue," just as necessity justifies the distraint of goods and chattels by a local officer in the recovery of taxes.[5]

Thacher followed on the other side, speaking "with the softness of manners, the ingenuity and cool reasoning, which were remarkable in his amiable character. But Otis was a flame of fire! with a promptitude of classical allusions, a depth of re-

[1] Adams, *Works*, II., 521–523.

[2] As given by Minot, *Hist. of Mass.*, II., 87–99; by Tudor, *Life of Otis*, 62, et seq.; and in the copy by Israel Keith: see Gray, in Quincy, *Reports*, 479–482. A brief minute of the November hearing is in Quincy, 51, et seq.

[3] Adams, *Works*, X., Index.

[4] *Ibid.*, 247.

[5] Minot, *Hist. of Mass.*, II., 89, 90.

search, a rapid summary of historical events and dates, a profusion of legal authorities, a prophetic glance of his eye into futurity, and a torrent of impetuous eloquence, he hurried away everything before him. American independence was then and there born; the seeds of patriots and heroes were then and there sown . . . every man of a crowded audience appeared to go away, as I did, ready to take arms against writs of assistance. Then and there was the first scene of the first act of opposition to the arbitrary claims of Great Britain. Then and there the child independence was born. In fifteen years, namely in 1776, he grew up to manhood, and declared himself free."[1]

The fervid rhetoric of the venerable patriot who in his twenty-fifth year had been inspired by his hero's words may be accepted with some grain of allowance. Yet that Otis's speech belongs to the epoch-making utterances there is small reason to doubt. It was a strong and a timely protest against a dangerous system; but its power was not due wholly to its quality as a discourse, for Otis's style of speaking and writing was rugged, with small claim to elegance of diction. It struck a responsive chord in the breasts of his countrymen. He gave voice to that which was moving their spirits; and is not that often the secret of the highest eloquence?

Before the trial Otis had resigned his office of advocate-general, because he was not willing to

[1] Adams, *Works*, X., 247, 248.

appear in support of the writs, which he believed to be illegal and tyrannical. This sacrifice his enemies explained as the result of pique because of his father's disappointment. But when has time-serving cynicism ever failed to sneer at the idealism which rebukes it or passes its ken? Justice Gray has well said that the "charge commonly made by the supporters of prerogative against James Otis, that his subsequent public course was dictated solely by revenge . . . , may be classed with D'Israeli's insinuation that John Hampden's refusal to pay ship money was occasioned by an ancient grudge against the sheriff who levied it." [1]

In the argument, which took up several hours, Otis first referred to his resignation. "I renounced that office, and I argue this cause from the same principle; and I argue it with the greater pleasure, as it is in favor of British liberty, at a time when we hear the greatest monarch upon earth declaring from his throne that he glories in the name of Briton, and that the privileges of his people are dearer to him than the most valuable prerogatives of his crown; and as it is in opposition to a kind of power, the exercise of which, in former periods of English history, cost one king of England his head, and another his throne."

Having delivered this telling and daring blow at George III., he next exposed the dangerous character of the writs. Admitting that special writs

[1] Gray, in Quincy, *Reports*, 411; Nugent, *Hampden*, 224.

directed to special officers to search certain places were legal, he denounced the general warrant in use as "the worst instrument of arbitrary power, the most destructive of English liberty and the fundamental principles of law, that ever was found in an English law-book"; as a weapon "that places the liberty of every man in the hands of every petty officer."

He then boldly appealed to guarantees of civil liberty, to principles of right, higher than statutory authority. "No act of parliament can establish such a writ"; for "an act against the constitution is void; an act against natural equity is void"; and "the executive courts must pass such acts into disuse." This principle, destined to become so vital in our national life, is powerfully supported even by English authorities.[1] Legalism may, indeed, deny that a court can in practice actually nullify an act of Parliament as contrary to the constitution; but Otis proclaimed a doctrine which British statesmen might well have heeded. He was simply going one step further than Brougham many years later, who affirms that "things may be legal and yet unconstitutional."[2]

Departing from the immediate question before the court—according to Adams's later recollection[3]—

[1] Gray, in Quincy, *Reports*, 517, 520–530; Adams, *Works*, II., 522, 525.

[2] Brougham, in Wensleydale Peerage Case, 5 *H. L. Cases*, 979.

[3] Adams, *Works*, X., 314–317, 328–338, 345, 351; Tudor, *Life of Otis*, 84.

Otis next arraigned the whole mercantile colonial system as contrary to natural equity. But it is highly probable that in Adams's failing memory the arguments of more advanced stages in the great revolutionary debate were blended with those brought forward in the case of the writs.

Apparently the majority of the judges were with Otis; and the judgment would have been against the writs had it been then given. The decision, however, was suspended in order that Hutchinson might obtain "information of the practice in England." At the November hearing "it appeared that such writs issued from the exchequer, of course, when applied for; and this was judged sufficient to warrant the like practice in the province."[1] From that time until after the Stamp Act writs of assistance were freely issued.[2] If strict legalism were to prevail, the decree of the court in this case was probably just. As a result of his careful inquiry, Justice Gray reaches the conclusion that the "decision of Hutchinson and his associates has been too strongly condemned as illegal: and that there was at least reasonable ground for holding, as matter of mere law, that the British parliament had power to bind the colonies; that even a statute contrary to the constitution could not be declared void by the judicial courts; that by the English statutes, as

[1] Hutchinson, *Hist. of Mass. Bay*, III., 94. Cf. the inaccurate statements of Adams, *Works*, X., 233.

[2] Gray, in Quincy, *Reports*, 405–434.

practically construed by the courts in England, writs of assistance might be general in form; that the superior court . . . had the power of the English court of exchequer; and that the writs of assistance prayed for, though contrary to the spirit of the English constitution, could hardly be refused by a provincial court, before general warrants had been condemned in England, and before the revolution had actually begun in America." Yet in none of the other provinces, except in New Hampshire and New York, does it appear that such writs were ever actually issued by the courts, although they were sometimes applied for.[1]

Otis's argument aided powerfully in the formation of public opinion. In the next May he was rewarded by a seat in the assembly; and for several years he dominated the revolutionary scene in Massachusetts. A great writer refers to his speech as "incendiary."[2] It did, indeed, set fire to the tinder which British policy was amply providing. Yet if historical truth is violated by exaggerating the importance of Otis's argument, there is equal danger in minimizing it. With increasing knowledge it is becoming easier to see that its meaning was very great. The validity of the writs of assistance involved a vital change in a long-standing policy. Strict enforcement of the acts of trade meant commercial ruin to New England. To the

[1] Gray, in Quincy, *Reports*, 501–512, 540.
[2] Lecky, *England*, III., 331.

northern merchant the illicit trade with the French West Indies and in the Spanish main alone was virtually the bread of life. If from the time of its enactment the molasses act had been rigorously enforced by writs of assistance it is not unlikely that the Revolutionary contest would have been hastened by thirty years. Otis and his associates were but opening the struggle for constitutional liberty which was already at hand in the mother-country. For the writs of assistance were similar in their arbitrary character to those "general warrants" whose use two years later in the case of Wilkes stirred the resentment of patriots on both sides of the sea.

Furthermore, in 1817 the British board of customs forbade the issue of a writ of assistance to any officer, "unless he should previously make oath before a magistrate of his belief and grounds of belief that smuggled goods were lodged in a certain house." Henceforth, in harmony with Otis's interpretation of the original law, only "special" writs were to be issued in England, and "thus the reasonableness of the position of the colonies was finally vindicated in the mother-country." [1]

[1] Gray, in Quincy, *Reports*, 535.

CHAPTER V

THE FIRST PROTEST OF VIRGINIA

(1758–1763)

THE strife between the assemblies and the governors, royal and proprietary, was one of the chief incidents of the colonial system which prepared the temper of the people for resistance.[1] Encroachments of the prerogative were more and more resented. The growing sensitiveness in Massachusetts is disclosed in 1761 by the bitter contest over an alleged misappropriation of the colony's share of forfeitures under the molasses act. The superior court decided against the colony, thus increasing the "animosity which existed between the contending parties in the province." It is significant that Otis, counsel for the colony, animadverted on the court of admiralty, where the abuse arose, "as not congenial with the spirit of the English constitution." [2]

An event still more enlightening as to the state

[1] Greene, *Provincial America* (*American Nation*, VI.), chaps. xii., xiii.; Greene, *Provincial Governor*, chaps. viii.–xi.

[2] Hutchinson, *Hist. of Mass. Bay*, III., 89, 91; Minot, *Hist. of Mass.*, II., 81, 87.

of popular feeling took place in 1762. Without legislative authority the governor had fitted out a sloop for the protection of the fishing-boats on the coast of Nova Scotia at a cost of some £400. An acrimonious wrangle ensued between him and the assembly, which saw in this act an invasion of its jealously guarded right of granting all supplies.[1] An incidental result of the contest was a pamphlet from Otis containing a bold and eloquent plea for civil liberty and democratic equality.[2]

While party antagonisms were thus being stirred in Massachusetts more serious resistance was provoked elsewhere by assertion of the royal prerogative. One of the most dearly prized safeguards of liberty won at the revolution of 1688 was the independence of the courts. In England, after the Act of Settlement, the judges held office during good behavior. They could not be punished for conscientious performance of duty by summary dismissal at the king's pleasure. Thus far the provincial judiciary had in fact enjoyed the same security of tenure, but now, a year after the accession of George III., the colonies were to be denied the guaranties of the Bill of Rights and again subjected to the arbitrary prerogative which had cost James II. his throne.

[1] Minot, *Hist. of Mass.*, II., 119, et seq.; Hutchinson, *Hist. of Mass. Bay*, III., 97–108; Tudor, *Life of Otis*, 117, et seq.; Adams, *Works*, X., 303, 310, 311.

[2] Otis, *Vindication of the Conduct of the House of Representatives.*

In October, 1761, after the death of James de Lancey, chief justice of New York, Benjamin Pratt, a Boston lawyer, was appointed to the office "during the king's pleasure."[1] The province was at once aroused. Some of the puisne judges at first absolutely refused to serve unless their commissions were renewed during good behavior. The assembly declined to provide salaries "except on the express condition" that independent commissions should be issued. Lieutenant-Governor Colden—who at the king's command had made the appointment—at first seemed to favor the tenure of the judges during good behavior, provided their salaries were also made perpetual; yet in January, 1762, he wrote to the board of trade strongly favoring the unconstitutional policy; but on his arrival Monckton, the new governor, censured it before the council. Pratt himself, after his selection for the vacant place on the bench, wrote that "as the parliament at the revolution thought it the necessary right of Englishmen to have the judges safe from being turned out by the crown, the people of New York claim the right of Englishmen in this respect."[2]

Finally, on recommendation of the board of trade, the chief justice's salary was provided from the royal quit-rents. "Such a salary," suggested Pratt, "could not fail to render the office of great service

[1] *N. Y. Docs. Rel. to Col. Hist.*, VII., 467, 470, 500, 505, 528, 705, 797.

[2] Bancroft, *United States* (ed. of 1885), II., 551, 552, 557.

to his majesty, in securing the dependence of the colony on the crown, and its commerce to Great Britain."[1] Pratt died in 1763. He was a worthy man, with a high place at the bar, but he held views which might well have fitted him to serve an arbitrary prince. "The people," said he, "ought to be ignorant; and our free schools are the bane of society; they make the lowest of the people infinitely conceited."[2] By advice of the board of trade the course taken in New York was adopted as a general policy. "On the ninth of December, 1761, the instruction went forth through Egremont, to all colonial governors, to grant no judicial commissions but during pleasure."[3] The next year Hardy, the governor of New Jersey, was summarily dismissed from his office for disobeying this command. It may not have been the royal purpose to make the courts dependent, but worthy motives cannot rightly be pleaded in justification of an unconstitutional policy.

After the reign of Anne no act of Parliament was ever vetoed by the crown. Any attempt to do so would have been resented as an invasion of constitutional liberty. In the provinces, however, this branch of the prerogative was steadily maintained; and nowhere did its exercise cause more discontent than in Virginia. By royal grant the governor and

[1] *N. Y. Docs. Rel. to Col. Hist.*, VII., 501.
[2] Adams, *Works*, II., 97.
[3] Bancroft, *United States* (ed. of 1885), II., 552.

assembly enjoyed the right of enacting statutes, if not repugnant to the laws of the realm. Within three months after passage all bills were to be submitted to the king for approval or disallowance. The veto, through the Privy Council, was freely exercised, and gave rise to complaints. For instance, ten acts adopted in the revision of 1748 were "repealed" by proclamation October 31, 1751, although the fact was not communicated to the assembly until April, 1752. Under royal instructions to the governor, a measure once vetoed could not be re-enacted without "express leave" of the king. Accordingly, the council and burgesses united in an address praying that the repealed bills might be re-enacted. By the "antient constitution and usage" of the colony, they declare, all new statutes, if not repugnant to the laws of Great Britain, "have always been taken and held to be in full force, until your majesty's disallowance thereof is notified here"; but acts once approved by the king "cannot by the legislature here be revised, altered, or amended, without a clause therein to suspend the execution thereof 'til your majesty's pleasure shall be known therein, even tho' our necessities . . . be ever so pressing." Therefore, they ask that in such cases the suspending clause may not be enforced, promising "not to enact any laws to take effect immediately that your majesty hath instructed your governor . . . not to pass without a suspending clause." Such enforcement,

they say, "will subject us to great hardships and inconveniences, since it is not within the reach of human foresight to form any laws but what may, from experience, be found to want necessary and sometimes speedy amendment."[1] This reasonable petition was denied by the crown.

As elsewhere shown, it was the imperial policy to encourage the slave-trade. American as well as English merchants shared in this lucrative traffic. Attempts to restrain it were frowned upon, and hence many of the acts of the provincial legislatures imposing duties on slaves imported were disallowed by the crown. In New England domestic importation was restrained chiefly because slavery increased the dependent portion of the community; but the slave-carrying trade to the sister colonies was not interfered with. Farther south such duties were laid for more economic and social reasons, sometimes from dread of slave insurrection.

On both sides of the sea a moral sentiment against slavery was springing up; but before the Revolution colonial legislation was very slightly, if at all, influenced by humane motives. After 1761 two acts of the Virginia assembly, raising the duty on imported slaves, were vetoed by the crown.[2] It is probable that these bills, like several others passed between 1723 and the Revolution, were

[1] Hening, *Statutes*, V., 432–448, 567; cf. Meade, *Old Churches*, I., 217.

[2] Hening, *Statutes*, VIII., 237, 337.

designed both to raise a revenue and to place a check upon the slave-trade, for the law-makers were alarmed by the rate at which negroes were being brought into the country.[1] Their motives were mainly prudential; they objected to the exercise of the prerogative, not primarily because the king was forcing upon them a traffic which they abhorred, but because they believed their welfare was being sacrificed in the interest of British merchants. They demanded a larger share in the control of their own economic and political affairs. The dislike for this branch of the royal prerogative was but an instance of the growing discontent of the colonies with the whole restrictive system of Great Britain.

Two years later (1763) Patrick Henry made his memorable protest against the crown's legislative prerogative in the "parson's cause." Almost from the beginning tobacco had been the currency of the province. It was legal tender in the payment of private and public debts, including taxes and the stipends of the established clergy. Such a currency must inevitably shrink or expand in value with the fortune of the season. A failure in the tobacco crop "involved the people in general distress; for by law if the salaries of the clergy and the fees of officers were not paid in tobacco by the tenth day of April, the property of delinquents was liable to be dis-

[1] Du Bois, *Suppression of the Slave-Trade*, 12–15. Cf. Spears, *African Slave-Trade*, chap. vii.; Williams, *Negro Race*, I., 115–133.

trained, and if not replevied within five days, to be sold at auction."[1] An act of 1748, confirming a law of 1696, fixed the salary of the clergy at sixteen thousand pounds of tobacco a year.

In 1755 a shortage in the tobacco crop threatened to increase the general distress caused by the heavy burden of the war taxes. Therefore, to release the "poor and needy," the assembly passed an act, to remain in force ten months, allowing all tobacco dues at the "option of the payer" to be paid either in kind or in money at the rate of sixteen shillings and eightpence for each hundred pounds of tobacco.[2] Since 1748 this had been the appraised value of inspected tobacco,[3] and it was even "better than the clergy in general" had commonly received.[4] Because the price set was equal to twopence a pound the law was called the "twopenny act." The act was general in its operation and did not apply merely to the clergy. Yet the latter may have suffered most, for, although they themselves raised tobacco on their glebes, they were mainly dependent for a living upon their salaries; while, as they complain, "others have different ways of gain, and if they lose by the bill one way, they may gain in another."[5]

[1] Campbell, *Virginia*, 510. Cf. Bland, *Letter to the Clergy*, 14.
[2] Hening, *Statutes*, III., 152; VI., 88, 568.
[3] Henry, *Henry*, I., 30.
[4] Commissary Dawson, in Perry, *Hist. Collections*, I., 448. For a different statement, see Maury, *Memoirs of a Huguenot Family*, 402.
[5] Perry, *Hist. Collections*, I., 436.

However, no formal protest followed, though meetings were held; some of the clergy sent memorials to their diocesan, the bishop of London, and Commissary Dawson wrote in their behalf.[1] But the crop was not so bad and the price did not rise so high as was expected; hence the majority of the clergy quietly accepted their loss. Among these was James Maury, plaintiff in the "parson's cause." "In my own case," he writes, "who am entitled to upwards of seventeen thousand weight of tobacco per annum, the difference amounts to a considerable sum. However, each individual must expect to share in the misfortunes of the community to which he belongs."[2]

Again in 1758, in mere expectancy of a short crop, a relief act was passed allowing for one year the payment of all tobacco dues in money at the same rate of twopence a pound.[3] As in the former case there was no clause suspending the operation of the act until sanctioned by the crown. Therefore, the act was represented as a bold defiance of the prerogative As anticipated, the crop was a partial failure, and the market price of tobacco rose to about three times the statutory rate. It was a hardship to the clergy as well as other creditors that by this law debts were made payable in paper money which was worthless outside of the colony,

[1] Perry, *Hist. Collections*, I., 434–448. Cf. Meade, *Old Churches*, I., 216. [2] Maury, *Memoirs of a Huguenot Family*, 402.
[3] Hening, *Statutes*, VII., 240, 241.

and so could not be used for the purchase of supplies in England, where they might be had cheaper than at home.

There was now no lack of resistance by the clergy. A war of pamphlets ensued. A convention was held, and an agent sent to England to present their case before the board of trade.[1] In a letter to that body Sherlock, bishop of London, denounced the act as "the work of men conscious to themselves that they were doing wrong"; as an "act of supremacy . . . inconsistent with the dignity of the crown," and manifestly tending "to draw the people of the plantations from their allegiance to the king when they find that they have a higher power to protect them."[2] In reply to a pamphlet by Bland,[3] it was asserted that the only "dearth and scarcity" existing that year in Virginia was "confined to one or two counties on the James River, and that entirely by their own fault." For "the cause of the short crop was want of plants," and the ground might have been planted "in corn or pease, which always turned to good account." Though the crop was short in some places it was on the whole "the best crop ever made in Virginia," being worth "near one third more" in cash value than any former crop.[4] The act, it was further alleged, was passed in the in-

[1] Rev. John Camm, in Perry, *Hist. Collections*, I., 459.
[2] *Ibid.*, 461. [3] Bland, *Letter to the Clergy*, 7.
[4] Rev. William Robinson, in Perry, *Hist. Collections*, I., 465–467.

terest of the rich, not in that of the poor. The "rich planters were the gainers by it," for they paid "the clergy and others to whom they were indebted at one-third of the price at which they sold their tobacco."[1]

This evidence—although *ex parte*—according to an American critic, reveals the famous option law of 1758, "in all its fresh and unadorned rascality."[2] There is small ground for so harsh a judgment. The motives of the assembly appear to have been just, although in its effect the act may have dealt unfairly with the clergy. The traveller Burnaby, who chanced just then to be in Virginia, while criticising the assembly's action, sharply censures the violent conduct of the clergy. "If, instead of flying out in invectives against the legislature; of accusing the governor of having given up the cause of religion by passing the bill; when, in fact, had he rejected it, he would never have been able to have got any supplies during the course of the war, though ever so much wanted; if, instead of charging the commissary with want of zeal for having exhorted them to moderate measures, they had followed the prudent councils of that excellent man, and had acted with more temper and moderation, they might, I am persuaded, in a very short time, have obtained any redress they could reasonably have desired. The people in general were extremely well affected towards the clergy."[3]

[1] Meade, *Old Churches*, I., 223.
[2] Tyler, *Henry*, 37.
[3] Burnaby, *Travels* (ed. of 1798), 22.

By advice of the board of trade the complaints of the clergy were brought before the Privy Council, where Lord Hardwicke, in particular, "delivered it as his sentiment that there was no occasion to dispute about the authority by which the act was passed, for that no court in the judicature whatever could look upon it to be law by reason of its manifest injustice alone."[1] On August 10, 1759, the act was vetoed by the king in council, and through special instructions the governor was ordered to publish the fact by proclamation. Fauquier himself was reprimanded for not rejecting the bill, and he was threatened with recall.[2]

Rev. John Camm, agent of the clergy in London, at once directed his attorney to bring action in the general court of Virginia for the recovery of his salary against the vestry of his parish of York Hampton, if they "should stand out" after learning the king's decision. "The parish refused to stand suit, till they had obtained a promise that the expence would be borne out of the publick funds. Accordingly an order of the house of burgesses was afterwards made that the expence of appeal where the clergy were concerned should be borne by the publick," thus bringing the clergy into direct collision with the assembly.[3] In 1764, by a vote of five to four, the general court decided against the

[1] According to Commissary Robinson, in Perry, *Hist. Collections*, I., 510.
[2] Campbell, *Virginia*, 514.
[3] Perry, *Hist. Collections*, I., 511.

plaintiff on the ground that the act was valid until disallowed by the king. Camm then appealed to the Privy Council, and pending the decision the "court refused to hear any other similar case."[1] The appeal was heard in 1767; but on the alleged ground of informality it was dismissed, the council seemingly being tired of the whole matter.[2]

Without waiting for the issue of Camm's suit some of the clergy had already brought action in the county courts. In the case of Rev. Thomas Warrington, of Charles parish, York County, "a jury of his parishioners found for him considerable damages, allowing on their oaths that there was about twice as much justly due to him as the act had granted. But the point of law was given against him," the court refusing to enter judgment in his favor. Next came the suit of Rev. Alexander White, of St. David's parish in King William. In this instance "the court refused to meddle in the matter and insisted on leaving" both law and fact "to the jury, who delivered their verdict" for the defendant.[3]

The suit which caused most interest was that of Rev. James Maury, rector of Fredericksville parish, Louisa, a man of high character. On November 5, 1763, the county court of Hanover, where the action was brought, adjudged the act of

[1] Henry, *Henry*, I., 45.
[2] Meade, *Old Churches*, I., 218; Henry, *Henry*, I., 45.
[3] Perry, *Hist. Collections*, I., 413, 430, 496, 513. Cf. Henry, *Henry*, I., 34.

1758, "to be no law"; so it was ordered that at the next term "a jury, on a writ of inquiry, should determine whether the plaintiff was entitled to damages, and if so, how much." The clergy, looking on this as a test case, were naturally elated; for the point of law being settled the final issue seemed foreassured. John Lewis, "who had defended the popular side, retired from the cause as virtually decided."[1] In their extremity the defendants called in Patrick Henry, a young lawyer, whose success at the Hanover bar is clearly attested by the fact that during the three years and a half since he was licensed to practice he had charged fees in one thousand one hundred and eighty-five suits, besides attending to a proportionate amount of "office" business.[2]

The suit came to trial on December 1, 1763. A large crowd attended, including "more than twenty" of the clergy. On the bench, as presiding magistrate, sat John Henry, the young advocate's father. The sheriff was ordered to summon a "select jury." This he did in a way not wholly to the liking of the plaintiff, who alleges that, excusing all gentlemen, the officer made the selection entirely from "the vulgar herd." It even appears that three or four of the jurors were dissenters of the sort called "New Lights." The case for the plaintiff was soon presented. By the testimony of "the two most con-

[1] Campbell, *Virginia*, 514; Wirt, *Henry*, 23.
[2] Henry, *Henry*, I., 25.

siderable purchasers of that county," it was proved that in 1759 tobacco "had currently sold at 50*s.* per hundred." [1] It was, therefore, an easy matter to show the jury how much of the parson's salary was still legally due.

When Mr. Lyons, the plaintiff's counsel, took his seat, Patrick Henry rose and made a speech which is looked upon as a warning of the Revolutionary contest. More than half a century later William Wirt clothed in vivid fancy the impression made by Henry's eloquence on the minds of surviving hearers. "The jury seemed to have been so completely bewildered, that they lost sight not only of the act of 1748, but that of 1758 also; for thoughtless even of the admitted rights of plaintiff, they had scarcely left the bar, when they returned with a verdict of *one penny damages*." [2]

For the chief points of the argument we are indebted to a letter written just twelve days after the trial by a man in no wise tempted to rhapsodize in Henry's favor. According to Rev. James Maury, plaintiff in the suit, the speaker "labored to prove 'that the act of 1758 had every characteristic of a good law; that it was a law of general utility, and could not, consistently with what he called the original compact between king and people, stipulating protection on the one hand and obedience on the other be annulled.' Hence, he inferred, 'that a king,

[1] Maury, *Memoirs of a Huguenot Family*, 420; Wirt, *Henry*, 25.
[2] Wirt, *Henry*, 25–27.

by disallowing acts of this salutary nature, from being the father of his people, degenerated into a tyrant, and forfeits all right to his subjects' obedience.' He further urged, 'that the only use of an established church and clergy in society, is to enforce obedience to civil sanctions, and the observance of those which are called duties of imperfect obligation; that when a clergy ceases to answer these ends, the community have no further need of their ministry, and may justly strip them of their appointments; that the clergy of Virginia, in this particular instance of their refusing to acquiesce in the law in question, had been so far from answering that they had most notoriously counteracted, those great ends of their institution' . . . Then he perorates to the following purpose, 'that excepting they (the jury) were disposed to rivet the chains of bondage on their own necks, he hoped they would not let slip the opportunity which now offered, of making such an example' of the plaintiff 'as might, hereafter, be a warning to himself and his brethren, not . . . to dispute the validity of such laws, authenticated by the only authority, which, in his conception, could give force to laws for the government of this colony, the authority of a legal representative of a council, and of a kind and benevolent and patriotic governor.'"

When he came to that part where he referred to the king as degenerating into a tyrant, "the more sober part of the audience were struck with horror.

Mr. Lyons called out aloud, and with an honest warmth, to the bench, 'that the gentleman had spoken treason,' and expressed his astonishment 'that their worships could hear it without emotion, or any mark of dissatisfaction.' At the same instant, too, amongst some gentlemen in the crowd behind me, was a confused murmur of Treason, Treason!" [1]

It would be as easy to underrate as to overestimate the significance of this event. Patrick Henry's speech was not wholly a triumph of oratory. Its deeper meaning consists in its being a protest against a dangerous system. The relief acts of 1755 and 1758 were probably void from their inception; and it may be that the clergy were harshly dealt with both by the law and by the court. Yet, under the peculiar circumstances, a royal prerogative which absolutely denied to the colonists the privilege of self-help through legislation even of temporary force was fast becoming intolerable. Since they were so far from the seat of power, they might have to wait many months for the king's decision. Moreover, his authority was often confessedly exercised in favor of commercial class privilege regardless of the wishes or needs of the provincials. Henry's protest stirred the hearts of the people because it gave voice to their deepening convictions. In the

[1] Maury, *Memoirs of a Huguenot Family*, 421–423; Hart, *Contemporaries*, II., No. 37, pp. 103–106. Cf. Perry, *Hist. Collections*, I., 514, 515.

parson's cause private right may have been obscured by the gathering shadow of a public wrong. Its issue was a forecast of the fate of the established church in Virginia; a presage of the Revolutionary drama which was even then opening with the announcement of Grenville's policy.

CHAPTER VI

THE FIRST ACT FOR REVENUE FROM THE COLONIES

(1763–1764)

DURING the year 1763, the British ministry resolved to adopt a more vigorous policy for colonial control. By the scheme then elaborated under the leadership of Charles Townshend, it was proposed (1) rigorously to enforce the acts of navigation and trade; (2) to raise a revenue on the colonies by direct and indirect taxation; and (3) to use this revenue for the support of a standing military force in America. The first step in carrying out the new policy was taken by George Grenville while at the head of the admiralty in Bute's cabinet. Grenville was an honest man, too independent to be counted among the "king's friends," but of small talent. He was devoted heart and soul to the old colonial system, and referred to the navigation act as "that palladium of the British commerce."[1] At his instance new powers were now given to the vice-admiralty courts in the colonies; and, by an ingenious device for putting an end to illicit trade, all the

[1] Cobbett-Hansard, *Parl. Hist.*, XVI., 102.

commanders of British ships-of-war serving in American waters were authorized to act as custom-house officers, with the usual share in the contraband and confiscated cargoes.[1]

This unwise measure—put in force by royal order a few months later (October, 1763)—bore its natural fruit. It became a standing cause of strife. Naval officers, often wholly ignorant of the laws which they were suddenly called upon to administer, would scarcely fail to be guilty of hasty and arbitrary acts. In particular, the reckless seizure and confiscation of ships engaged in the West India trade caused bitter resentment and appeals for redress.

This ominous opening of the new policy was followed by other measures which speedily united the colonies in common opposition. In April, 1763, Grenville superseded Bute as head of the cabinet. On September 23, in pursuance of a minute made the day before at a meeting of the treasury board, the commissioners of the stamp duties were directed to transmit a draft of an act for imposing proper stamp duties in America. Soon thereafter a scheme for a new and efficient system of admiralty courts was formed; while stringent orders were issued for a more rigid enforcement of the acts of trade.

Grenville next took up the scheme for raising a revenue in the colonies. The burden of the national debt had been vastly increased by the war.

[1] 3 George III., chap. xxii., § 4.

Since 1754 the volume of taxes had grown by more than £3,000,000. The minister was assured that the colonies could well afford to give a part of the money needed to maintain garrisons for their own protection. To support a force of about ten thousand men a revenue of £300,000 would be required, and it was intended that the colonies should bear one-third of this expense. At no time during the struggle was it proposed that the colonies should be taxed for the support of the home government, or even for the full support of the army in America.

Accordingly, on March 9, 1764, Grenville, in the House of Commons, suggested that a revenue from indirect taxes should at once be raised, and gave notice of his purpose at the next session to bring in a bill for the levying of stamp duties in the colonies. Declaratory resolves to this effect were agreed upon in committee, and the next day formally accepted by the House.[1] April 5 the "sugar act" received the royal approval, and with it the Revolutionary struggle may be regarded as actually beginning.

King George III. was much pleased with the new policy. On proroguing Parliament, April 19, he referred with approval to "the wise regulations which had been established to augment the public revenues, to unite the interests of the most distant possessions of the crown, and to encourage and

[1] *Commons Journal*, XXIX., 933, 935.

secure their commerce with Great Britain." What a "commentary on this sentence," exclaims Frothingham, "were the events that occurred eleven years later, on the anniversary of the delivery of this speech."[1]

The preamble of the statute of 1764[2] declares that the duties authorized are given and granted to the king because "it is just and necessary, that a revenue be raised in" his American dominions "for defraying the expenses of defending, protecting, and securing the same." The act of 1733 is confirmed and extended. The duty laid by it on sugar is raised, while that on molasses is lowered. Heavy duties are also levied on various foreign products, England now being made the staple for Asiatic as well as European goods. The drawbacks on re-exportation are diminished, to the advantage of the English exchequer. The colonies are absolutely forbidden to import rum or spirits from foreign plantations, or to trade with the French islands of St. Pierre or Miquelon. New and stringent regulations for the enforcement of the acts of trade are prescribed. The penalties for breach of the trade laws at the option of the informer or prosecutor may be recovered either in any court of record in the colony where the offence is committed or in any court of admiralty in America. The defendant is thus denied the right of trial by jury, and may be

[1] Frothingham, *Rise of the Republic*, 164.
[2] 4 George III., chap. xv.

compelled to go five hundred leagues to defend himself before a strange tribunal. Though he himself is required to give ample security for costs, in case the suit goes against him, yet, should he chance to win, he is not entitled to any costs if the judge certifies that there was probable ground of action; nor is the person making the seizure liable to prosecution therefor.[1]

The orders for the enforcement of the molasses act with the report that it was to be renewed were received in America with the "strongest apprehensions."[2] They "caused a greater alarm in this country," wrote Governor Bernard in January, 1764, "than the capture of Fort William Henry did in 1757."[3] The law of 1733 was enacted, not for the benefit of the English merchant, but in the interest of the British sugar islands, at the expense of the colonies. It laid a prohibitory duty on the importation into the colonies of all foreign sugar and molasses; and so, if enforced, would have destroyed the best trade of the northern provinces. In the foreign West Indies and the Spanish main the staple products of the northern colonies found a ready market. Fish, lumber, grain, and provisions were exchanged for sugar, molasses, and money. The molasses was used for the manufacture of rum, of which in 1731 New England made

[1] Bradford, *Mass. State Papers*, 18, et seq.
[2] Minot, *Hist. of Mass.*, II., 140; Adams, *Works*, X., 345.
[3] Bernard, *Select Letters*, 9.

one million two hundred and sixty thousand gallons.[1]

Only through the island trade could the money be obtained for the purchase of English goods, since as in part a result of the restrictive system the balance of trade was always against the colonies. On the average about £1,000,000 sterling were needed each year to make good the unfavorable balance with Great Britain. According to Franklin, Pennsylvania imported from England goods to the value of £500,000 and in return exported but £40,000, the balance being largely made up with the West Indies.[2] Indeed, this trade was absolutely essential to the progress and prosperity of New England. It was so admitted by Bernard in 1763 and by Pownall the next year. Without it, said Defoe, in 1741, "these colonies would perish." Ten years earlier Gee was of the same opinion, referring particularly to the export of provisions.[3] In 1763 fifteen thousand hogsheads of French and Spanish molasses were brought into Massachusetts alone.[4] After the war the trade with the foreign islands had rapidly revived. This traffic would now suddenly be cut off.

[1] Cf. Bradford, *Mass. State Papers*, 19–21; Macpherson, *Annals*, III., 176; Anderson, *Hist. and Chron. Deduction*, III., 438.

[2] Franklin, *Works* (Bigelow's ed.), III., 413. Cf. Macpherson, *Annals*, III., 175; Beer, *Commercial Policy*, 107.

[3] Bernard, *Select Letters*, 6, 11; Pownall, *Administration* (ed. of 1765), 5; Defoe, *A Plan for the English Commerce* (ed. of 1741), 356; Gee, *Trade and Navigation* (ed. of 1731), 72.

[4] Bernard, *Select Letters*, 10.

Very instructive are the arguments which Mauduit, the agent of Massachusetts in England, was directed by the general court to present against the sugar act. "The business of the fishery, which, it was alleged, would be broken up by the act, was at this time estimated in Massachusetts at £164,000 sterling per annum; the vessels employed in it, which would be nearly useless, at £100,000; the provisions used in it, the casks for packing fish, and other articles, at £22,700 and upwards: to all which there was to be added the loss of the advantage of sending lumber, horses, provisions, and other commodities to the foreign plantations as cargoes, the vessels employed to carry fish to Spain and Portugal, the dismissing of 5,000 seamen from their employment, the effects of the annihilation of the fishery upon the trade of the Province and of the mother-country in general, and its accumulative evils by increasing the rival fisheries of France."

A forcible argument turned upon the means of "remittances to England for goods imported into the Province, which had been made in specie to the amount of £150,000 sterling, besides £90,000 in treasurer's bills for the reimbursement money, within the last eighteen months. The sources for obtaining this money were through foreign countries by the means of the fishery, and would be cut off with the trade to their plantations." The agent was also instructed to protest against the naviga-

tion act of 1663, requiring European goods to be shipped through England. The "expense of carrying some articles received for fish in Spain and Portugal to London, to enter them in the custom-house there, would be so great as to exceed the amount of the cost, and many times the value of the duty also; and fruit so necessary for the health and comfort of the inhabitants would be lost from the length of voyage."[1]

The first result of the new policy was to organize public opinion throughout the colonies. A sentiment of union was fostered and forms and modes of concerted action were developed. For a year memorials, petitions, state papers, protests, pamphlets, and public meetings were the order of the day. The sugar act and the menace of a future stamp tax were before the country at the same time; but it is very significant that the first movement in America was against the sugar act. Even before its passage the measures of 1763 for the execution of the commercial code had aroused hostile discussion. Rhode Island prepared a remonstrance to the lords of trade, to be presented by her agent "if any three of the agents of the other colonies would unite with him in the same."[2] "To promote a union or a coalition of all their councils" against the renewal of the molasses act, committees of

[1] Minot, *Hist. of Mass.*, II., 146–148, 150. Cf. the facts collected by Weeden, *Econ. and Soc. Hist. of New Eng.*, II., 745–768.

[2] In the *Boston Evening Post*, November 21, 28, 1763.

merchants were formed in various towns, and these corresponded with each other.[1]

The earliest action against the new sugar law by a political body was taken at the Boston town-meeting on May 24, 1764. It was supposed that the law was already enacted although as yet only its passage by the Commons had been reported.[2] A committee of five was then appointed to prepare instructions for the town's newly chosen representatives in the assembly of the province. The instructions were drafted and presented by Samuel Adams, a graduate of Harvard, who even thus early comes forward in the great rôle he was to take in the Revolution as the organizer of public opinion. The representatives are enjoined to use their "influence in maintaining the invaluable rights and privileges of the province"; and to "preserve that independence in the house of representatives, which characterizes a free people." "Our trade," they add, "has for a long time laboured under great discouragements; and it is with the deepest concern that we see such further difficulties coming upon it, as will reduce it to the lowest ebb, if not totally obstruct and ruin it." The assembly is rebuked for not taking earlier notice of the "intentions of the ministry, to burden us with new taxes," referring to the agent's report that the molasses act was to be renewed.[3]

[1] Frothingham, *Rise of the Republic*, 162, 163.
[2] Hutchinson, *Hist. of Mass. Bay.* III., 106, 107.
[3] *Ibid.*, III., 104, 105.

The Bostonians enlarged on the nature of imperial trade. If "our trade is to be curtailed in its most profitable branches, and burdens beyond all possible bearing laid upon that which is suffered to remain, we shall be so far from being able to take off the manufactures of Great Britain, that it will be scarce possible for us to earn our bread." Furthermore, "if our trade may be taxed, why not our lands? Why not the produce of our lands, and every thing we possess or make use of? This we apprehend annihilates our charter right to govern and tax ourselves. It strikes at our British privileges, which as we have never forfeited them, we hold in common with our fellow-subjects who are natives of Britain: If taxes are laid upon us in any shape without our having a legal representation where they are laid, are we not reduced from the character of free subjects to the miserable state of tributary slaves? . . . As his majesty's other northern American colonies are embarked with us in this most important bottom, we farther desire you to use your endeavours, that their weight may be added to that of this province: that by the united application of all who are aggrieved, all may happily obtain redress." [1]

Though this initial document of the Revolution deals with the restrictions on trade, it deftly includes three principles of immense moment in the

[1] Otis, *Rights of the British Colonies* (London ed.), App., 100–105.

approaching struggle. (1) It asserts the doctrine of "no taxation without representation"; and at the same time scorns the attempted distinction between internal and external taxation. (2) The full rights of Britons are claimed. (3) The united protest of all the colonies is suggested.

The general court of Massachusetts met on May 30. A committee was appointed by the house of representatives to consider the instructions of the Boston meeting, and the letter from Mauduit received early in the session announcing the final enactment of the revenue law.[1] This committee submitted a "memorial" drafted by Otis, stating the rights of the colonies. This famous argument contains a fourth revolutionary principle, in the hope expressed that "it will not be considered a new doctrine that even the authority of the parliament of Great Britain is circumscribed by certain bounds, which if exceeded, their acts become those of mere power without right, and consequently void"; for "it is contrary to reason that the supreme power should have right to alter the constitution. This would imply that those who are intrusted with sovereignty by the people have a right to do as they please."

The memorial, like the instructions, deals almost wholly with the trade problem. "The fishery is the centre of motion, upon which the wheel of all the British commerce in America turns." It "is

[1] Hutchinson, *Hist. of Mass. Bay*, III., 108.

certain that without the fishery seven-eighths of this commerce would cease." If "it can be demonstrated that the sugar and molasses trade from the northern colonies to the foreign plantations is upon the whole a loss to the community, by which term is here meant the three kingdoms and the British dominions taken collectively, then, and not till then, should the trade be prohibited." Such is "the extent of this continent, and the increase of its inhabitants, that if every inch of the British sugar islands was as well cultivated as any part of Jamaica or Barbadoes, they would not now be able to supply Great Britain" and her American colonies.[1]

An elaborate letter to the agent, also written by Otis, was reported. Mauduit is sharply rebuked for his concessions to the ministerial policy; and he is instructed to urge the repeal of the sugar act and to protest against the proposed stamp duties. "The silence of the province," he is told, "should have been imputed to any cause, even to despair, rather than be construed into a tacit cession of their rights, or an acknowledgment of a right in the Parliament of Great Britain to impose duties and taxes upon a people, who are not represented in the house of commons." They protest against the "burdensome scheme" of "obliging the colonies to maintain an army" as unconstitutional. To prove that it was unjust they refer to their services, particularly in the

[1] Otis, *Rights of the British Colonies* (London ed.), App. 106–120.

recent war, and to the debt which the province is still bearing.[1] This letter and the memorial were sent to the agent in London. On June 13 a committee of correspondence, with Otis at the head, was authorized to acquaint the other governments with the action of the house and to "desire the several assemblies on this continent to join with them in the same measure."[2] Accordingly, twelve days later, a circular letter was sent to all the colonies asking their "united assistance."

In these proceedings the Massachusetts house of representatives had acted separately from the council, apparently the first instance of their so doing in any general question relating to the whole province. Such an irregular course seemed unwise to the more cautious party. On their petition, therefore, the governor called the general court to meet in special session on October 18.[3] In reply to the governor's speech the council and house joined in a forcible argument against the act of 1764, with a mere incidental reference to the proposed stamp tax. A petition to the House of Commons (November 3), drafted by Hutchinson, was also agreed upon.[4] It contained a weak protest against laying

[1] *Journal of the* [Mass.] *House*, 1764, pp. 72–77. Cf. Bradford, *Mass. State Papers*, 25–28.

[2] *Journal of the* [Mass.] *House*, 1764, p. 77; reappointed on November 3 by the general court, *ibid.*, 137.

[3] Hutchinson, *Hist. of Mass. Bay*, III., 110, 112; *Journal of the* [Mass.] *House*, 1764, p. 93.

[4] Bradford, *Mass. State Papers*, 18–23.

stamp duties, but did not claim exemption from parliamentary taxation as a right. Its real weight bears on the injustice of the sugar act. Furthermore, in their letter to Mauduit, transmitting the petition, they distinctly say "that the late act of parliament" imposing additional duties "affects this colony more than any other."[1]

From the facts already presented it seems very clear that for at least seven months after the declaratory resolves the people of Massachusetts were far more alarmed by the enforcement of the sugar act than they were by the menace of a stamp tax. The other colonies, too, as the next chapter will disclose, were quite alive to the supreme importance of this first internal revenue law. An examination of the pamphlet literature for the same period leads to the like result. In July appeared James Otis's *Rights of the British Colonies Asserted and Proved.* This is the calmest and most carefully prepared of Otis's political writings. It is a clear and temperate exposition of natural rights and constitutional principles as equally concerning all members of the British nation. He argues that colonists have lost none of their privileges as men and Englishmen by leaving the old home. "If I were to define the modern colonists, I should say, they are the noble discoverers and settlers of a new world; from whence, as from an endless source, wealth, and plenty, the means of power, grandeur, and glory,

[1] Bradford, *Mass. State Papers*, 24, 25.

in a degree unknown to the hungry chiefs of former ages, have been pouring into Europe for three hundred years." A colony "is a settlement of subjects in a territory disjointed or remote from the mother country, and may be made by private adventurers or the public; but in both cases the colonists are entitled to as ample rights, liberties, and privileges as the subjects of the mother country are, and in some respects to more."

Otis, however, freely admits the legislative supremacy of Parliament. All of the colonies "are subject to, and dependent upon Great Britain"; and "therefore as over subordinate governments" Parliament "has an undoubted power and lawful authority, to make acts for the general good, that, by naming them, shall and ought to be equally binding as upon the subjects of Great Britain within the realm." The colonists "should not only be continued in the enjoyment of subordinate legislation, but be also represented in some proportion to their number and estates in the grand legislation of the nation." Without such representation taxation is unconstitutional. "Is there the least difference, as to the consent of the colonists, whether taxes and impositions are laid on their trade, and other property, by the crown alone, or by the parliament?" If Parliament "have an equitable right to tax our trade, it is indisputable that they have as good an one to tax the lands"; for "there is no foundation for the distinction some make in England between an

internal and an external tax on the colonies."[1] To have the whole tax for a standing army in America "levied and collected without our consent is extraordinary." That privilege "is allowed even to tributaries, and those laid under military contribution."

Yet there is no thought of independence in Otis's argument. Were the colonists "inclined to it, they know the blood and the treasure it would cost." Could they have the choice between independency and subjection to Great Britain, "upon any terms above absolute slavery, I am convinced that they would accept the latter." They "will never prove undutiful, till driven to it, as the last fatal resort against ministerial oppression, which will make the wisest mad, and the weakest strong."[2]

About two months after the appearance of Otis's tract, Oxenbridge Thacher published his *Sentiments of a British American*. This is a loyal, conciliatory, but firm protest against the new ministerial policy. It is devoted almost wholly to analyzing the act of 1764, showing that its provisions are unjust to the colonists and dangerous to British subjects everywhere. The effect of the act will be to deprive England of her best customer; for the colonists will be compelled either to manufacture their goods or do without. About the same time that the pamphlets of Otis and Thacher were issuing from the Boston press, two essays were

[1] Otis, *Rights of the British Colonies*, 37, 53, 57, 63, 99.
[2] *Ibid.*, 65, 77.

anonymously published in the middle colonies. They are written from the stand-point of the American merchant, and each deals with the trade problem in a broad, tolerant, and enlightening spirit, showing that the welfare of the entire British people would be served better by increasing rather than restricting the liberty of commerce.[1]

According to Moses Coit Tyler, it is very curious that these writings, though published long after the announcement of the proposed Stamp Act, make no reference to that measure. In his view the American "people, bewildered in the thicket of passing events, did not at first perceive their true relations and proportions. But, at about the time of the appearance of Thacher's pamphlet, that is, in the early autumn of 1764, the appalling significance of the notice of the stamp act began to dawn upon them; and then, almost at once, the centre of gravity shifted from the immediate past to the immediate future,—from the measure that had become a law in the preceding March[2] to the measure that might become a law in the following March."[3]

In several ways this statement is misleading. The American people were by no means "bewildered" by the swift development of the ministerial policy. On the contrary, they very clearly saw the vast

[1] *An Essay on the Trade of the Northern Colonies*, etc.; *Some Thoughts on the Method of Improving and Securing the Advantages*, etc.

[2] A slip for "April."

[3] Tyler, *Lit. Hist. of Am. Rev.*, I., 60, 61

relative importance of the act of 1764. Its significance was not less "appalling" than that of the proposed stamp tax. It was even more alarming, so far at least as the northern provinces were concerned. The tax levied by it was the same in principle as the stamp duties; while the swift destruction of trade which it threatened meant an immediate sacrifice more harmful than the stamp tax could possibly cause for years to come. Nor was there such a sudden change in sentiment as here represented. Feeling simply became more intense because the grievance was growing. The effect of the stamp tax was cumulative. In the struggle against it, presently to be considered, the sugar act was not forgotten. It lies at the bottom of the revolutionary contest.

This is so not merely because it taxed the American people without their consent, but chiefly because it confirmed the molasses act which was already being executed by new and unconstitutional devices. In the words of a writer who rejected the popular idea that the "Revolution began in the stamp act," "neither the duties laid in 1764 nor the collection of the taxes anticipated from the stamp act of 1765 would have produced a tithe of the evil that would have followed" from the enforcement of the molasses act. "They went to war

[1] Chamberlain, "The Revolution Impending," in Winsor, *Narr. and Crit. Hist.*, VI., 24–26, 63. Cf. the similar view of Weeden, *Econ. and Soc. Hist. of New Eng.*, II., 753.

against a preamble. They fought seven years against a declaration."[1] This epigram of Webster, like most epigrams, is only true in part. The revolutionary debate did, indeed, turn mainly on constitutional principles; but below the question of constitutional right lay the economic grievance as a stern reality.

[1] Webster, *Works*, IV., 109.

CHAPTER VII

THE MENACE OF THE STAMP ACT

(1764–1765)

THE renewal of the molasses act and the enforcement of the commercial code were peculiarly the work of Grenville. For the Stamp Act, too, he must be held responsible. Yet the policy of American taxation was not original with him. It was in a sense "devolved" upon him. Its elements may be found in the administrative records of the preceding thirty-five years. Save for the form of the molasses act, Parliament had steadily observed the distinction between external and internal taxes. Duties were levied solely for the regulation of trade, although some revenue might actually accrue.

Taxation of the colonies had already been thought of: even a stamp duty was suggested in 1728[1] and again in 1739[2] by Sir William Keith, governor of Pennsylvania; and a "scheim" for a similar tax was submitted to Governor Clinton by Lieutenant-

[1] Keith, *A Short Discourse*, in Byrd, *Dividing Line*, II., 215–227.

[2] Lecky, *England*, III., 343; Adams, *Works*, X., 74, 80.

Governor Clarke of New York, in 1744.[1] In 1754 and in 1756[2] Shirley of Massachusetts advised the levy of a common war fund on America. His project was ably resisted by Franklin,[3] and the ministry declined to accept it; as it did also the similar counsel of Governor Hardy of New York and Governor Dinwiddie of Virginia.

The actual initiative in the new revenue policy was taken by Charles Townshend, first lord of trade in the Bute cabinet. Like Grenville, he prided himself on having an accurate knowledge of the colonies; and with Halifax, in 1751–1753, he had urged a firmer exercise of the prerogative in securing provincial control. He now (1763) favored a policy to be enforced by acts of Parliament. The colonial governments were to be remodelled according to a uniform plan; the acts of trade enforced; a revenue raised in America, to be disbursed under the king's sign manual without appropriation by Parliament; and this revenue used for the salaries of the royal officers and the maintenance of a military establishment in the colonies.

The carrying out of Townshend's scheme was prevented by the dissolution of the Bute ministry in April, 1763. In part his policy was taken up and developed by Grenville, as already seen; but he positively rejected its harsher features. He de-

[1] *N. Y. Docs. Rel. to Col. Hist.*, VI., 268, 269.

[2] Knox, *Controversy*, 196–197; Lecky, *England*, III., 341.

[3] Franklin, *Works* (Bigelow's ed.), II., 376–383; Knox, *Controversy*, 194.

clined to interfere with the colonial charters or to allow the salaries of the royal officers in the colonies to be paid from England. "Nor would he listen to the suggestion that the revenue to be raised in America should constitute a fund to be disposed of under the sign manual of the king; he insisted that it should be paid into the receipt of the exchequer to be regularly appropriated by parliament."[1]

To a man of Grenville's narrow statesmanship a revenue tax laid by Parliament on America seemed reasonable. That it would be strictly legal appeared clear, unless it was unlawful for Parliament in any case to legislate for the colonies while they were unrepresented; and even the colonies had not yet made that claim. Moreover, he urged, there was pressing need of money in consequence of the war.[2] Equally reasonable to him appeared the design to place a small military force in America and to tax the colonists for its support. There seems to be no ground to question the justice of Lecky's view that the "primary object" of the government was to defend the provinces and to guard the wider imperial interests; although he admits that "it is possible, and indeed very probable, that a desire to strengthen the feeble executive, and to prevent the systematic violation of the revenue laws, was a motive with those who recommended the establishment of an army in America."

[1] Bancroft, *United States* (ed. of 1885), III., 68.
[2] Almon, *Biographical Anecdotes*, II., 88.

With the new conquests in India and America the increasing expense of maintaining the empire bore more heavily upon the eight million Englishmen at home, "weighed down with debt and with taxation, and with a strong traditional hostility to standing armies." Furthermore, in both India and Ireland the precedent of dividing the military burden with the dependencies of the crown had already been set. At that moment, though impoverished and groaning under almost intolerable ecclesiastical and political oppression, Ireland was supporting a force of twelve thousand men.[1] Yet it must be confessed that the example of these "conquered" countries could hardly afford a persuasive argument against the traditional dread of a standing army which in the colonies was even more acute than in England.

Nevertheless, Grenville proposed the stamp tax with some reluctance. He was urged to it by men at home like Welbore Ellis and the Marquis of Halifax, as also by Pownall, Bernard, and other American officials.[2] Even Franklin — who it is much to be feared more than once resorted to special pleading—at this time professed to view with complacency a tax for the support of an army in the colonies.[3] Therefore Grenville decided to give a

[1] Lecky, *England*, III., 339.

[2] Pownall, *Administration* (ed. of 1765), 89, et seq.; Bernard, "Principles of Law and Polity," in his *Select Letters*, App., 75, et seq. [3] Franklin, *Works* (Bigelow's ed.), III., 299.

year's notice of the proposed act, as if to invite a constitutional discussion; or, as his critics said, to "allow time for mooting the question of right and preparing in the colonies an opposition to the law." To the provincial agents at the close of the session he said he had "proposed the resolution in the terms the parliament has adopted, from a real regard and tenderness for the subjects in the colonies." If "they thought any other mode of taxation more convenient to them, and made any proposition which should carry the appearance of equal efficiency with the stamp duty, he would give it all due consideration." [1] But it seems clear that he meant the tax, whatever its form, should be levied by Parliament.[2]

The reception in America of the notice of the Stamp Act should have been ample warning to the ministry of the dangerous course on which it was entering. The effect in Massachusetts has already been considered.[3] Even the timid Hutchinson, in a letter to the secretary of the chancellor of the exchequer, forcibly presented the case of the people. In most of the colonies the proposed stamp tax and the new revenue law were discussed. Memorials, petitions, and addresses were sent to England. The assembly of Connecticut desired the governor, Thomas Fitch, to "prepare an humble and earnest

[1] Knox, *The Claim of the Colonies* (London, 1765), 32.
[2] Cf. Knox, *Controversy*, 199, with Burke, *Speech on American Taxation* (ed. of 1775), 53–55.
[3] Chap. vi., above.

address" to Parliament against the "bill for a stamp duty, or any other bill for an internal tax on the colony"; and this address with the "Book of Reasons" was ordered sent to the agent in London.[1] The book referred to was the *Reasons Why the British Colonies in America Should not be Charged with Internal Taxes by Authority of Parliament*, written by the governor himself as member of a committee. It admits that Parliament has "a general authority, a supreme jurisdiction over all his majesty's subjects," and that this jurisdiction properly extends to duties for the regulation of trade. But since the people neither have nor can have representation in Parliament, the charging of stamp duties or other internal taxes "would be such an infringement of the rights, privileges, and authorities of the colonies, that it might be humbly and firmly trusted, and even relied upon, that the supreme guardians of the liberties of the subject would not suffer the same to be done."[2]

The attitude of Pennsylvania was much bolder. At this moment the selfish policy of the proprietors was arousing earnest opposition. Franklin and Galloway, with the great body of the Quakers, desired that the province should be made a royal government, while Dickinson and others dreaded the change lest their civil liberties should be still

[1] *Conn. Col. Records*, XII., 299.

[2] Fitch, *Reasons Why*, etc; also in *Conn. Col. Records*, XII., 651–671.

more imperilled.[1] Both parties, however, were united against the schemes of Grenville. The assembly showed a willingness to grant requisitions in the customary way; but they would have nothing to do with the "financier." The king always accompanied his request with "good words"; but Grenville, "instead of a decent demand, sent them a menace, that they should certainly be taxed, and only left them the choice of the manner." [2] Parliament "had really no right at all to tax them." Therefore, they resolved that as "they always had, so they always should think it their duty to grant aid to the crown, according to their abilities, whenever required of them in the usual constitutional manner." [3]

This sentiment is repeated in the instructions to Richard Jackson, the colony's agent. "Taxes assessed in any other manner, where the people are not represented, and by persons not acquainted with the colonies, would be unequal, oppressive, and unjust, and what we trust a British parliament will never think to be right." [4] The agent is required to remonstrate against the proposed stamp tax, and to endeavor to secure a repeal or modification of the sugar act. Indeed, the two sets of instructions sent to him deal largely with the evil effects of the acts

[1] Pa., *Votes of the House of Rep.*, V., 345, 346, 379, 380; also Franklin, *Works* (Bigelow's ed.), III., 286, et seq.

[2] Franklin to Alexander, in *Works* (Bigelow's ed.), VI., 143–145.

[3] Pa., *Votes of the House of Rep.* (Bigelow's ed.), V., 383.

[4] *Ibid.*, 363, 364, 377, 378.

of trade, and in particular with those caused by the prohibition of the European trade in lumber and iron. At this time Franklin was sent to England to act with Jackson as colonial agent, and letters from the committees of correspondence brought encouraging word of the resistance of Massachusetts and Rhode Island.[1]

North Carolina protested strongly against the sugar act. October 31, 1765, in addressing Governor Dobbs, the assembly said: "We observe our commerce circumscribed in its most beneficial branches, diverted from its natural channel, and burthened with new taxes and impositions laid on us without our privity or consent and against what we esteem our inherent right and exclusive privilege of imposing our own taxes."[2] The governor himself regarded the acts of trade as harmful to the colony.[3]

In some cases the governors took a course not at all likely to soothe the popular resentment. Thus the assembly of South Carolina was prorogued before any statement of its wishes was agreed upon, but not before a committee with power to act had been appointed. In the instructions to Charles Garth, the colony's agent, the committee complain of the severity of the acts of trade, and declare that the stamp tax would be inconsistent

[1] Pa., *Votes of the House of Rep.*, V., 355, 356, 383 (September 11), 376, 383 (October). [2] *N. C. Col. Records*, VI., 1261.
[3] *Ibid.*, VI., 1020–1023, especially 1025–1035.

"with that inherent right of every British subject, not to be taxed but by his own consent, or that of his representatives. For, though we shall submit most dutifully at all times to acts of parliament, yet, we think it incumbent on us humbly to remonstrate against such as appear oppressive, hoping that when that august body come to consider this matter they will view it in a more favorable light, and not deprive us of our birthright, and thereby reduce us to the condition of vassals and tributaries." [1] In like spirit, through repeated prorogations, the governor of Maryland prevented the assembly from coming together before the Stamp Act was passed; yet the hostile public opinion made itself known through the press.[2]

The course taken by Virginia was firm and dignified. A committee appointed by the council and burgesses [3] on November 14 prepared an address to the king, a memorial to the Lords, and a remonstrance to the House of Commons. The colonists, it is claimed in the address, have "every right and privilege" which their ancestors had in the mother-country. Exemption from taxes without consent is a "fundamental principle of the British constitution"; for "property must become too precarious for the genius of a free people, which

[1] Gibbes, *Doc. Hist. of Am. Rev.*, I., 1–6.
[2] Mereness, *Maryland*, II., 477; Scharf, *Maryland*, I., 524.
[3] *Journal of the House of Burgesses*, 1764, p. 38; Wirt, *Henry*, App., note *a*.

can be taken away from them at the will of others, who cannot know what taxes such people can bear, or the easiest mode of raising them; and who are not under that restraint, which is the greatest security against a burthensome taxation, when the representatives themselves must be affected by every tax imposed."

Not less courageous was the response of New York. That province, as already seen,[1] had recently suffered from the interference of the prerogative with the independence of the courts; and now Governor Colden was urging a project to allow final appeal to the king in all cases tried before a jury in the common law courts, even without a writ of error.[2] Early in March, 1764, a memorial of the merchants against the renewal of the molasses act came before the council;[3] and in June, when the news arrived that this was actually done, the people were stirred to strong resentment. Men spoke in the temper of the later non-importation resolves. "It appears plainly," said Robert Livingston, "that these duties are only the beginning of evils. The stamp duty, they tell us, is deferred, till they see whether the colonies will take the yoke upon themselves, and offer something else as certain. They talk, too, of a land-tax, and to us the ministry

[1] See chap. v., above.

[2] *N. Y. Docs. Rel. to Col. Hist.*, VII., 681–685, 695, et seq.

[3] *Council Minutes*, XXV., 512; *Calendar of Council Minutes*, 464.

appears to have run mad."[1] Even Colden admitted the folly of the molasses act.[2]

In October the New York assembly appointed a committee of correspondence, and presented a strong statement of grievances to the king and another to the Lords. In the petition to the Commons—which Colden describes as "indecent"—they declare that "the thought of independency upon the supreme power of the parliament we reject with the utmost abhorrence. The authority of the parliament of Great Britain to model the trade of the whole empire, so as to subserve the interest of her own, we are ready to recognize in the most extensive and positive terms; but the freedom to drive all kinds of traffic, in subordination to and not inconsistent with the British trade, and an exemption from all duties in such a course of commerce, is humbly claimed by the colonies as the most essential of all the rights to which they are entitled as colonists, and connected in the common bond of liberty with the free sons of Great Britain. For, since all impositions, whether they be internal taxes, or duties paid for what we consume, equally diminish the estates upon which they are charged, what avails it to any people by which of them they are impoverished?" The loss of their rights, they suggest, is likely to "shake the power of Great Britain."[3]

[1] Bancroft, *United States* (ed. of 1885), III., 78.
[2] *N. Y. Docs. Rel. to Col. Hist.*, VII., 612.
[3] Bancroft, *United States* (ed. of 1885), III., 89.

The opposition in Rhode Island was led by Stephen Hopkins, who, like Fitch of Connecticut, was governor by popular choice. In October the committee of correspondence, of which he was chairman, sent out a circular letter saying, "the impositions already laid on the trade of these colonies must have very fatal consequences. The act in embryo for establishing stamp duties, if effected, will further drain the people, and strongly point out their servitude"; it "will leave us nothing to call our own." Therefore, it is hoped that some method may "be hit upon for collecting the sentiments of each colony, and for uniting and forming the substance of them all into one common defence of the whole."[1] The assembly's petition to the king, in November, professes alarm at the resolution to impose a stamp tax; declares that "the restraints and burdens" laid on their trade by the late act are such, if continued, as "must ruin" them; and claims the "essential privilege" of Englishmen of being governed by laws made by their own consent, and of parting with their property only "as it is called for by the authority of such laws."[2] November 22, by authority of the assembly, appeared at Providence a pamphlet by Stephen Hopkins, in which the American case was admirably stated.[3] It was re-

[1] See the letter in Pa., *Votes of the House of Rep.*, V., 376. Cf. *R. I. Col. Records*, VI., 403. [2] *R. I. Col. Records*, VI., 414–416.

[3] Hopkins, *The Rights of the Colonies Examined*: reprinted by Almon as *The Grievances of the American Colonies Candidly Examined.*

printed in nearly every colony; and both in America and England its strong argument and conciliatory tone must have made a powerful impression on public opinion.[1]

In reply to Hopkins the case of the loyalists was most skilfully presented by Martin Howard, a reputable lawyer of Newport. He boldly attacked the new doctrine of nullification at its vital point, denying "that the colonists have rights independent of, and not controlled by, the authority of parliament." First, under their charters they have not all the political rights of Englishmen at home. "I fancy," he says, "when we speak or think of the rights of freeborn Englishmen, we confound those rights which are personal with those which are political. . . . Our personal rights, comprehending those of life, liberty, and estate, are secured to us by the common law, which is every subject's birthright, whether born in Great Britain, on the ocean, or in the colonies; and it is in this sense we are said to enjoy all the rights and privileges of Englishmen. The political rights of the colonies, or the powers of government communicated to them, are more limited; and their nature, quality, and extent depend altogether upon the patent or charter which first created and instituted them. As individuals, the colonists participate of every blessing the English constitution can give them; as corporations created

[1] Foster, *Stephen Hopkins*, II., 57–59; Tyler, *Lit. Hist. of Am. Rev.*, I., 63–69.

by the crown, they are confined within the primitive views of their institution." Secondly, the colonists are not exempt from taxation because they do not send delegates to Parliament. They are virtually represented. The members of the House of Commons are "representatives of every British subject wherever he be, and therefore, to every useful and beneficial purpose, the interests of the colonists are as well secured and managed by such a house, as though they had a share in electing them." Therefore, he concludes, the colonists may justly challenge the justice or wisdom of the particular measures of Parliament, but not its jurisdiction.[1]

While these and other writings in America were called out by the notice of the Stamp Act, two notable tracts issued from the London press. One, by the famous wit, member of Parliament, and man of letters, Soame Jenyns, assails in a jaunty though effective manner the objections of the colonists to being taxed by Parliament; the other, by Grenville himself, is perhaps the ablest defence of the ministerial policy produced during this stage of the controversy. Like Jenyns,[2] he bases the right of taxation on the alleged fact of "virtual representation," and he refers with satisfaction to the palliative measures by which the late revenue act was accompanied. For the bounties on hemp and flax had

[1] Howard, *A Letter from a Gentleman at Halifax*, 6, 8, 21.

[2] Jenyns, *The Objections to the Taxation of Our American Colonies Briefly Considered* (ed. of 1765), 4–9.

been renewed; the American whale-fishery encouraged by the repeal of the high discriminating duties; and the rice of South Carolina and Georgia admitted directly to the foreign plantations of America as by earlier laws it might be carried to European ports south of Cape Finisterre.[1]

The remonstrances of the colonies were of no avail. Under the rule against receiving petitions against a money bill their appeals were rejected without a hearing.[2] The lords of trade reported to the king the action of the assemblies of Massachusetts and New York as "indecent" and fitted to disturb the "dependence" of the colonies.[3] For a moment, it is said, Grenville, like Adam Smith, did, indeed, look with favor on the recommendation of Franklin[4] and the repeated suggestions of Otis,[5] that colonial representation should be admitted to Parliament; but in both America and England the idea was generally regarded as impracticable.

The passage of the Stamp Act attracted scarce any notice in England. February 2, 1765, a final remonstrance of the colonial agents proved fruitless.

[1] Grenville, *The Regulations Lately Made*, 47–56, 104, et seq.; see his speech in 1766, in Cobbett-Hansard, *Parl. Hist.*, XVI., 102.

[2] *Ibid.*, XVI., 35; Kimball, *Correspondence of the Col. Governors of R. I.*, II., 360.

[3] *N. Y. Docs. Rel. to Col. Hist.*, VII., 678.

[4] Smith, *Wealth of Nations* (ed. of 1887), II., 135, et seq.; Franklin, *Works* (Bigelow's ed.), II., 384–387.

[5] Tudor, *Otis*, 185–200.

As a substitute Franklin could only urge the usual method by royal requisition; but Grenville silenced him by asking how the apportionment was to be made. Four days later the fifty-five resolutions comprising the details of the proposed law were submitted by Grenville to the House of Commons in the committee of ways and means.[1] On the 13th the bill was introduced without debate; on the 27th it was sent to the Lords; and on March 22 it received the royal sanction by commission, the king then being insane. The debate was languid, being enlivened only by Colonel Isaac Barré's eloquent reply to Charles Townshend, in which he referred to the colonists as "sons of liberty,"[2] and by Conway's defence of the right of petition.

During the progress of the bill there was but one division, and then the minority did not amount to "more than forty." It was passed in the Commons by a vote of 205 to 49, and by the Lords without "debate, division, or protest."[3] The arrogance and blind indifference with which the sentiments and petitions of the colonists were treated during the enactment of this fatal measure place the responsibility for the American Revolution squarely on the shoulders of the British government.

[1] *Commons Journal*, XXX., 97–101.

[2] Cobbett-Hansard, *Parl. Hist.*, XVI., 38, 39, n. On the question of the genuineness of this speech, see Adolphus, *Hist. of Eng.*, I., 167, and especially, McCrady, *Hist. of S. C., 1719–1776*, 579, n. 2.

[3] Cobbett-Hansard, *Parl. Hist.*, XVI., 40.

The Stamp Act[1] required that every broadside, newspaper, or pamphlet; every bill, note, or bond; every lease, license, insurance policy, ship's clearance paper, or college diploma; every instrument used in the conveyance of real or personal property; and all legal documents of every kind should be written or printed on stamped vellum or paper, to be sold by public officials appointed for the purpose. In some cases the cost of business transactions would thus be increased many fold. The penalties imposed are cognizable, "at the election of the informer or prosecutor," in any court of record or admiralty having jurisdiction in the colony where the offence is committed. The revenue derived is to be paid into his majesty's exchequer, and expended under direction of Parliament solely for the purpose of "defending, protecting, and securing the said colonies."

To lessen the opposition, Grenville informed the agents that he did not think of sending stamp officers from England, "but wished to have discreet and respectable persons appointed from among the inhabitants; and that he would be obliged to them to point out to him such persons."[2] They all complied with his request. Even Franklin named his friend, John Hughes, as stamp distributer for Pennsylvania; and through his influence Jared Ingersoll, the agent of Connecticut, accepted the same office

[1] 5 George III., chap. xii. Cf. MacDonald, *Select Charters*, 281–305.

[2] Gordon, *United States*, I., 166.

for his colony. The duty "will fall particularly hard on us lawyers and printers," said Franklin. The next day after the act was passed he wrote home to Charles Thompson, "we might as well have hindered the sun's setting. . . . Since it is down, . . . let us make as good a night of it as we can. We may still light candles. Frugality and industry will go a great way towards indemnifying us."[1] Neither Franklin nor any of his colleagues seems to have doubted that the act would be quietly enforced. In fact, Knox, agent of Georgia, wrote a pamphlet in its defence.[2]

At the same time Grenville extended his palliative measures. New bounties were offered on the importation of timber from the plantations; the restrictions on the export of iron and lumber were relaxed; and the rice of North Carolina was given the same advantage as that of the two neighboring provinces.[3] In the effect on colonial sentiment these favors were far more than offset by the provisions of another unwise law of this session.[4] By the so-called "billeting act" British troops in America might be quartered in barracks provided by the colonies; or when these did not suffice, in ale-houses, inns, barns, and uninhabited houses; the owners

[1] Franklin, *Works* (Sparks's ed.), X., 430.
[2] Knox, *The Claim of the Colonies*, etc.
[3] 5 George III., chap. xlv., §§ 11, 19, 22, 23.
[4] 5 George III., chap. xxxiii.; MacDonald, *Select Charters*, 306–313.

might be compelled to furnish them with food and drink at a fixed rate; and the money needed for the purpose was required to be levied "in such manner as the public charges for the province are raised."

CHAPTER VIII

AMERICA'S RESPONSE TO THE STAMP ACT (1765)

THE effect of the passage of the Stamp Act soon revealed how fatally the ministry and even the colonial agents had misjudged the temper of the American people. The spontaneous formation of parties, begun two years before,[1] now made rapid progress. The party of resistance, the patriots, were called Whigs; the party of submission, Hutchinson says, as early as 1763 were branded as Tories. The former, more numerous and aggressive, succeeded eventually in uniting all the provinces, from New Hampshire to Georgia, in common opposition to the new tax.

There was, however, a period of suspense. For some time after it was known that the bill had become a law the colonists paused as if weighing the tremendous responsibility of defying the jurisdiction of Parliament. To many of the leaders it seemed inevitable that the act would be enforced. Five weeks after news of its passage Hutchinson wrote to

[1] Hutchinson, *Hist. of Mass. Bay*, III., 103.

the ministry, "The stamp act is received among us with as much decency as could be expected; it leaves no room for evasion, and will execute itself."[1] April 27, Colden of New York assured Halifax that his province remained in "perfect tranquillity," notwithstanding "the efforts of a faction to raise discontent in the minds of the people."[2] Governor Sharpe of Maryland reported that the "warmth" of those who had a "notion" that the charter exempted them from such requisitions "would soon abate," and that in spite of the violent outcries of the lawyers the Stamp Act would be carried into execution.[3]

Although the "assembly of Pennsylvania was in session when tidings of the passage of the stamp act reached Philadelphia," it adjourned without taking "public notice of it."[4] Even Otis, who in 1764 had said "it is our duty to submit" to the sugar act,[5] now again declared it to be the "duty of all humbly and silently to acquiesce in all the decisions of the supreme legislature. Nine hundred and ninety-nine in a thousand of the colonists will never once entertain a thought but of submission to our sovereign, and to the authority of parliament in all possible contingencies. . . . They undoubtedly have the right to levy internal taxes on the colo-

[1] Bancroft, *United States* (ed. of 1885), III., 110.
[2] *N. Y. Docs. Rel. to Col. Hist.*, VII., 710.
[3] Browne, *Sharpe Correspondence*, III., 210.
[4] Gordon, *Pennsylvania*, 433.
[5] Otis, *Rights of the British Colonies*, 40.

nies."[1] But appearances were deceptive: there was a smouldering fire of popular resentment which might at any time be stirred into a living flame.

The first organized resistance came from Virginia under the lead of Patrick Henry. From the moment of his victory in the "parson's cause" that young lawyer was marked in the province as a rising man. He was now rewarded with a place in the house of burgesses, where, his biographer says, "he was promptly to gain an ascendency that constituted him, almost literally, the dictator of its proceedings, so long as he chose to hold a place in it."[2] Early in May, 1765, he was chosen to fill a vacancy in the representation of Louisa county, of which he was not then a resident. The old leaders of the assembly were cautious and seemed inclined to yield.

It was not until four weeks after the opening of the session that the first action regarding the stamp tax was taken. On May 29 a motion was carried "that the house resolve itself into a committee of the whole, immediately to consider the steps necessary to be taken in consequence of the resolutions of the house of commons of Great Britain, relative to the charging certain stamp duties in the colonies and plantations of America." In the committee Patrick Henry, who had taken his seat but nine days before, stepped boldly forward to assume the

[1] Otis, *Brief Remarks on the Defence of the Halifax Libel; Vindication of the British Colonies*, 21, 26.
[2] Tyler, *Henry*, 55.

revolutionary leadership, proposing a preamble and seven resolutions, which he had written on a blank leaf of an old copy of "Coke upon Littleton."[1] In them he claimed for the colonists of Virginia all the rights at any time enjoyed by the people of Great Britain. Among these is the exclusive privilege of taxing themselves, "the distinguishing characteristic of British freedom, and without which the ancient constitution cannot subsist."

A stormy debate ensued. The resolutions were supported by the more democratic members of the western counties, but strongly opposed by Bland, Wythe, Nicholas, Pendleton, Peyton Randolph, and all the old and aristocratic leaders, "whose influence in the house had, till then, been unbroken,"[2] and whom the mover had just antagonized by his exposure of a corrupt financial scheme which some of them had favored.[3] Henry was abused, ridiculed, and threatened. According to Jefferson, who heard the debate, the contest on the fifth resolution was especially "bloody"; but "torrents of sublime eloquence from Mr. Henry, backed by the solid reasoning of Johnston, prevailed."[4] This resolution declares that every attempt to vest the power of taxation in any "persons whatsoever, other than the general assembly aforesaid, has a manifest tendency

[1] See the critical account of the versions of these resolutions by Tyler, *Henry*, 61–67, notes.

[2] Jefferson, *Memorandum*, in *Hist. Mag.*, new series, II., 91.

[3] Henry, *Henry*, I., 76–78; Tyler, *Henry*, 56, 57.

[4] Jefferson, *Memorandum*, in *Hist. Mag.*, new series, II., 91,

to destroy British as well as American freedom." At this point, while "descanting on the tyranny" of the Stamp Act, the orator startled the house with a warning from history as with thrilling voice he exclaimed, "Tarquin and Cæsar had each his Brutus; Charles the First his Cromwell; and George the Third"—here the speaker cried "Treason," and the word was echoed from every part of the house, while Henry "rising to a loftier attitude," and fixing his eye on the chair, closed the sentence—"may profit by their example. If this be treason make the most of it."

Apparently the preamble and seven resolutions were agreed to in the committee of the whole. On May 30, after a warm contest in the house, the last two resolutions with the preamble were rejected, while the remaining five were adopted, but only by a majority of one or two.[1] The resolutions rejected boldly asserted that the inhabitants of the colony "are not bound to yield obedience to any law or ordinance" imposing taxation upon them without their consent, and denounced as "an enemy to his majesty's colony" any person who should maintain that any body other than the colonial assembly has the right or power to levy such taxes. On the afternoon of that same day Henry, "clad in a pair of leather breeches, his saddle-bags on his arm, leading a lame horse, and chatting with Paul Carring-

[1] According to Patrick Henry's own statement, Henry, *Henry*, I., 81.

ton," was seen passing along the street on his way home.[1] The next morning, their dread antagonist being no longer at hand, the conservative members got together and expunged the fifth resolution from the record.

Meantime, in manuscript copy, as the supposed action of the assembly, the entire series of resolves agreed to in committee—except the third, omitted by error—was on its way to Philadelphia and New York. Borne onward to New England, they were published and widely circulated in the newspapers, and had a powerful influence in producing the excitement and violence which followed. For beyond question the Virginia resolves mark an important crisis in the impending revolution.[2]

While Virginia was thus raising the standard of resistance Massachusetts pointed the way to union. On May 29—the very day when Patrick Henry read his resolves—the general court began its session. The speech of Governor Bernard was most infelicitous in tone. Contrary to custom the assembly made no reply, but turned at once to the great question of the hour. June 6, James Otis suggested that a meeting of "committees" from the assemblies should be called to consider the danger which menaced the country from the stamp tax.[3] His suggestion was unanimously adopted; but the conservatives, in the hope of controlling the move-

[1] Grigsby, *Virginia Convention of 1776*, 150.
[2] Henry, *Henry*, I., 94–106. [3] Warren, *Am. Rev.*, I., 21.

ment, were strong enough to secure the election of two of their number to serve with Otis as delegates of the house. These were Oliver Partridge and Timothy Ruggles, whom Bernard described as "fast friends of government,—prudent and discreet men who would never consent to any improper application to the government of Great Britain."[1] On June 8 was adopted a circular letter inviting all the colonies to send delegates to a congress to be held in New York on the first Tuesday in October, to consider the difficulties to which the colonies "are and must be reduced by the operation of the acts of parliament for levying duties and taxes" upon them, to prepare a loyal and humble "representation of their condition" to the king and Parliament, and to "implore relief."[2]

For several weeks the response to the Massachusetts letter was not encouraging. The assembly of New Hampshire seemed to favor the plan of a congress but failed to appoint delegates.[3] June 20, the last day of its session, the assembly of New Jersey received the circular letter. Robert Ogden, the speaker, was opposed to the project; and the house, while "not without a just sensibility respecting the late acts of parliament affecting the northern

[1] Frothingham, *Rise of the Republic*, 177; *Journal of the* [Mass.] *House*, 1765, pp. 108, 110.

[2] The letter is in the *Boston Evening Post*, August 26, 1765; also Bradford, *Mass. State Papers*, 36; and *Journal of the* [Mass.] *House*, 1765, p. 109.

[3] *N. H. Provincial Papers*, VII., 81.

colonies," and wishing "such other colonies as think proper to be active every success they can loyally and reasonably desire," unanimously declined "to unite on the present occasion."[1]

Gradually the influence of the Virginia resolves made itself felt. The tide of popular excitement began to rise. First to accept the invitation was South Carolina. August 2, under the leadership of Christopher Gadsden, the assembly appointed delegates to the congress, and in its resolutions[2] the Stamp Act and the acts extending the jurisdiction of the courts of admiralty were held to have "a manifest tendency to subvert the rights and liberties of this province." Next, on August 13, the town of Providence instructed its representatives in the Rhode Island assembly to use their influence in favor of sending delegates to New York, and to "procure the passage of a series of resolves, in which were incorporated those adopted by Virginia."[3] Accordingly, in September, the assembly appointed delegates to the congress, and adopted a declaration of rights embracing the substance of the Virginia resolutions, and directing all officers of the colony "to proceed in the execution of their respective offices in the same manner as usual," promising to indemnify and save them harmless.[4] During the

[1] *N. Y. Archives*, IX., 496.
[2] Drayton, *Mem. of Am. Rev.*, I., 41; McCrady, *Hist. of S. C., 1719–1776*, 561–563.
[3] Frothingham, *Rise of the Republic*, 181.
[4] *R. I. Col. Records*, VI., 449–452.

same month deputies were chosen by the assemblies of Pennsylvania, Connecticut, and Maryland. In each case resolves similar in character to those of Virginia were agreed upon.[1]

Thus in six cases delegates to the congress were chosen by the assemblies. In addition New York sent its committee of correspondence, while Delaware and New Jersey were each represented by delegates elected by members of the assemblies acting informally.[2] Virginia, Georgia, and North Carolina sent no delegates, their governors refusing to call the assemblies. New Hampshire, too, was unrepresented. Yet all these colonies were in sympathy with the congress, and from both Georgia and New Hampshire came assurance of accepting its action.[3]

Meantime, throughout the country intense excitement prevailed. From town-meetings, county assemblies, and provincial legislatures came remonstrances and resolves. Through pamphlets and newspapers a fierce contest was waged. It soon became quite clear that the Stamp Act would be absolutely nullified. As a form of passive resistance

[1] Pa., *Votes of the House of Rep.*, V., 419, 420, 426; *Conn. Col. Records*, XII., 410, 421–425. Cf. Mereness, *Maryland as a Prop. Province*, 478–482; Scharf, *Maryland*, I., 535–539.

[2] Journal of the Congress, in Niles, *Principles and Acts*, 159–161; *N. Y. Archives*, IX., 524–526; Almon, *Prior Documents*, 34, 35.

[3] Proceedings of the Congress, in Almon, *Prior Documents*, 34, 35, 37.

non-importation agreements[1] were made and domestic manufactures encouraged. While the Stamp Act was still pending, many of the people of Boston had pledged themselves to abstain from the use of English goods, and "particularly to break off from the custom of wearing black clothes or other mourning." After its passage, to increase the growth and manufacture of wool in the province, an agreement was "signed by a great portion of the inhabitants of Boston, to eat no lamb during the year."[2] Frugality and industry were the maxims of the hour.

Active resistance to the execution of the Stamp Act centred in the associations of Sons of Liberty which at this time sprang up everywhere in the colonies and whose name may have been suggested by Barré's speech. For a time these organizations were kept secret; but "as they increased, they grew in boldness and publicity, announcing their committees of correspondence, and interchanging solemn pledges of support."[3] They aimed directly at forcible resistance. To enforce the non-importation agreements and to compel the stamp distributers to resign were their principal objects.

Nowhere was opposition more active or determined than in New York.[4] Here Franklin's wood-cut

[1] For example, in New York, *N. Y. Docs. Rel. to Col. Hist.*, VII., 800.

[2] Hutchinson, *Hist. of Mass. Bay.*, III., 116, 117. Cf. Almon, *Prior Documents*, 5. [3] Frothingham, *Rise of the Republic*, 183.

[4] Dawson, *Sons of Liberty*, 69, et seq.

device, first employed against the French, of a snake cut in parts, with the motto "join or die," was used against Great Britain;[1] and here, even before Virginia had raised the standard of resistance or Massachusetts had pointed the way to union, "independence" was boldly suggested by John Morin Scott. The "great fundamental principles of government," he wrote, "should be common to all its parts and members, else the whole will be endangered. If, then, the interest of the mother country and her colonies cannot be made to coincide; if the same constitution may not take place in both; if the welfare of the mother country necessarily requires a sacrifice of the most natural rights of the colonies—their right of making their own laws, and disposing of their own property by representatives of their own choosing—if such is really the case between Great Britain and her colonies, then the connection between them ought to cease; and, sooner or later, it must inevitably cease."[2] In September a New York newspaper announced that on February 7, 1765, "Lady North American Liberty" had "died of a cruel stamp on her vitals"; but, happily, she had left an only son, "prophetically named Independence," on whom the "hopes of all her disconsolate servants are placed for re-

[1] In the *Constitutional Courant*, September, 1765. Cf. Dawson, *Sons of Liberty*, 74; Thomas, *Hist. of Printing*, II., 322.

[2] Scott's essay signed "Freeman," in Holt, *N. Y. Gazette and Weekly Postboy;* Dawson, *Sons of Liberty*, 70.

lief under their afflictions, when he shall come of age."[1]

Forcible annulment could scarcely fail to degenerate into mob-violence — the inevitable incident of revolution. The first riots occurred in Boston, where, August 8, the name of Andrew Oliver, brother-in-law of Chief-Justice Hutchinson, had appeared in a published list of stamp distributers. On the morning of August 14, Oliver's effigy with that of Lord Bute was seen suspended from an elm in Boston, thereafter famous as the "Liberty Tree." In the evening a great crowd, marching in order and shouting, "Liberty, property, and no stamps," carried the images on biers through the old state-house, where the governor and council were then sitting. Arriving at Kilby Street, they pulled down the frame of a building which they fancied Oliver designed for a stamp office, and then used the fragments to burn the effigies before his own home on Fort Hill, first smashing all the windows next to the street.[2] The following day Oliver announced his resignation.

Worse things were soon to come. On Sunday, August 25, the popular preacher, Jonathan Mahew, warmly condemned the Stamp Act, indiscreetly taking the text, "I would they were even cut off

[1] Holt, *N. Y. Gazette and Weekly Postboy*, September 5, 1765; Dawson, *Sons of Liberty*, 77.

[2] Hutchinson, *Hist. of Mass. Bay*, II., 120, 121; Bancroft, *United States* (ed. of 1885), III., 135.

which trouble you." The next day a mob burned the records of the vice-admiralty court, sacked the house of the comptroller of customs, and destroyed the fine mansion of Hutchinson, who was erroneously believed to favor the Stamp Act, and was disliked for his course regarding the writs of assistance.[1] "The very partition walls were beaten down; the furniture destroyed; the family paintings and plate defaced; a large sum of money pillaged; and a valuable collection of books and manuscripts, the fruit of thirty years' labor, almost entirely annihilated."[2] The manuscript of Hutchinson's history of Massachusetts still "carries on its edges the mud of the Boston streets into which it was thrown."

The town-meeting declared its detestation of these proceedings. A few arrests were made; but the prisoners were soon rescued by the people, and none of the culprits were ever brought to justice. December 17, Oliver suffered a more shameful indignity. Alleging a rumor that he was about to resume his office of stamp distributer the "true-born sons of liberty" demanded a public denial. Standing under the Liberty Tree before two thousand people, he was forced to read a renunciation of his office and swear to it on the spot before a justice of the peace.[3]

[1] *Mass. Archives*, 26, cited by Gray, in Quincy, *Reports*, 441.
[2] Grahame, *United States*, IV., 216. Cf. Hutchinson, *Hist. of Mass. Bay.*, III., 124, et seq.
[3] Hutchinson, *Hist. of Mass. Bay*, III., 139; Gordon, *United States*, I., 180.

Similar outrages occurred in other colonies. At Newport, on the very next day after Hutchinson's house was destroyed, Augustus Johnson, the stamp distributer, Thomas Moffat, a physician, and Martin Howard, author of the able pamphlet above mentioned, were hanged and burned in effigy. The following night the same mob gutted Howard's house and injured his person; whereupon, in fear of his life, with Moffat, he "took shelter in the Signet man of war, and soon after departed for Great Britain."[1] Thus in the name of liberty free speech was suppressed.

Naturally the wrath of the people was chiefly directed against those Americans who had accepted the post of stamp distributer. Besides those already mentioned, Meservé of New Hampshire, Coxe of New Jersey, McEvers of New York, Mercer of Virginia, Houston of North Carolina, Lloyd of South Carolina, Ingersoll of Connecticut, Hood of Maryland, and even Franklin's friend, the stanch Quaker, Hughes of Pennsylvania, all through reason or terror were induced to resign. October 31, the day before the Stamp Act was to take effect, all the colonial governors except Hopkins, of Rhode Island, took the oath to put it in force; but already every stamp distributer on the continent had given up his post.

The first day of November began with the tolling of muffled bells and the flying of pennants at half-

[1] Almon, *Prior Documents*, 14.

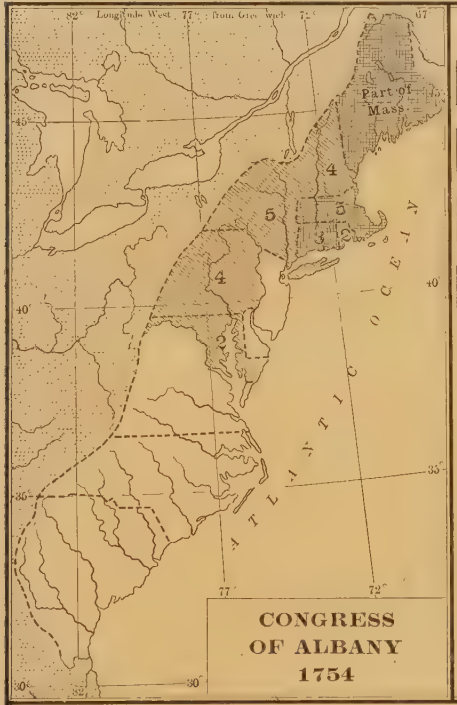
mast. It "was signalled in several towns by processions carrying the stamp act to be burned or buried, or again by the funeral of a coffin bearing the name of Liberty, which after being lowered into the grave was raised again with the inscription 'Liberty Revived.' Handbills posted at the street corners in Boston warned those who should distribute or use stamps to look to themselves." [1] Like notices were posted in New York, where the day was spent in tumultuous demonstrations ending in riots.[2] For a time after this date business requiring the use of stamps was generally suspended throughout the colonies. Except in Rhode Island the courts were closed. Ships hesitated to go to sea without stamped clearance papers. But gradually business was nearly everywhere renewed in open disregard of the law. Nullification was virtually complete.

The first congress of the Revolution met in the city hall at New York on Monday, October 7, 1765, and remained in session until Friday the 25th.[3] It was composed of twenty-seven members representing nine colonies. Timothy Ruggles, a loyalist deputy of Massachusetts, was elected chairman, and John Cotton clerk. Conspicuous for ability among the members were Edward Tilghman of Maryland; Thomas McKean and Cæsar Rodney

[1] Ludlow, *War of Am. Independence*, 72.

[2] Dawson, *Sons of Liberty*, 89, et seq.

[3] The proceedings and state papers of the Congress are in Niles, *Weekly Register*, II., 337–344; Niles, *Principles and Acts*, 155–169; and Almon, *Prior Documents*, 26–37.



EXPLANATION:

By Legislature (unicameral in Pennsylvania and Delaware).

By Lower (Popular) House of Legislature.

By Governor or Governor and Council.

By Irregular Members.

1765- Delaware and New Jersey: informally by some members of Lower House of Legislature.

New York: represented by its Committee of Correspondence.

Unrepresented.

Figures indicate number of Delegates sent.

DESIGNATION OF MEMBERS TO GENERAL CONGRESSES 1754 - 1765

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of Delaware; Philip Livingston of New York; William Livingston of New Jersey; John Dickinson of Pennsylvania; Thomas Lynch, John Rutledge, and Christopher Gadsden of South Carolina; and James Otis of Massachusetts, the foremost speaker. It was decided to base the liberties claimed by Americans, not on royal charters, as Johnson of Connecticut suggested, but upon higher principles of natural equity. "A confirmation of our essential and common rights as Englishmen," wrote Gadsden, "may be pleaded from charters safely enough; but any further dependence upon them may be fatal. We should stand upon the broad common ground of those natural rights that we all feel and know as men, and as descendants of Englishmen. I wish the charters may not ensnare us at last by drawing different colonies to act differently in this great cause. Whenever that is the case, all will be over with the whole. There ought to be no New England man, no New-Yorker, known on the continent, but all of us Americans."[1]

After eleven days' debate a "declaration of rights and grievances" was adopted, consisting of a preamble and fourteen resolutions. On the question of natural rights, the declaration announced that his majesty's subjects in the colonies owe the same allegiance and are entitled to the same "inherent rights and liberties" as "his natural born

[1] Bancroft, *United States* (ed. of 1885), III., 150, quoting a MS. letter of Gadsden.

subjects" in Great Britain. Among the essential rights of Englishmen are those of trial by jury and of not being taxed save by their own consent. This led to an assertion as to representation: that the "people of these colonies are not, and, from local circumstances, cannot be, represented in the house of commons." Their only representatives "are persons chosen therein by themselves." The logical deduction was that no taxes "ever have been, or can be constitutionally imposed on them, but by their respective legislatures." Therefore, the recent acts of Parliament laying stamp duties and extending the jurisdiction of the courts of admiralty "have a manifest tendency to subvert the rights and liberties of the colonies." Indirect taxes are not squarely repudiated as unconstitutional; but the recent restrictions on American commerce are described as "burthensome and grievous."

Similar rights and immunities are claimed in the "address" to the king, the "memorial" to the Lords and the "petition" to the Commons. In the latter the deputies say that there is a "material distinction in reason and sound policy, at least, between the necessary exercise of parliamentary jurisdiction in general acts, for the amendment of the common law, and the regulation of trade and commerce through the whole empire, and the exercise of that jurisdiction, by imposing taxes on the colonies"; and "that it would be for the real interest of Great Britain, as well as her colonies, that the late regulations

should be rescinded" and the recent tax laws repealed.

The congress of 1765 is a fact of decisive meaning in the rise of the American nation. It is an expression of the sentiment of union forced out by the revenue acts. Its state papers—the first drawn up by an intercolonial body during the Revolution—are admirable in form and character. In the declaration of rights a body representing the majority of the American people first set forth the cardinal principles upon which the republic was soon to rest.

CHAPTER IX

THE REPEAL OF THE STAMP ACT
(1766)

A MONTH before the bursting of the storm aroused by its policy the Grenville ministry had fallen. It was driven from office under circumstances which revealed that a struggle for constitutional liberty must be waged on both sides of the sea. The king had never given full confidence to his cabinet; and he continued to take secret counsel with his favorite, the Earl of Bute, under whose direction the new administration was formed.[1] Determined to govern as well as reign, he strove to do so through the same desperate expedient of balancing the *curia* against the *camera* which had brought ruin to Charles I. and long before him to Edward II.[2] For the maxim that the king can do no wrong is true only when he acts solely through his constitutional advisers.

At first Grenville seems to have found himself little more than the mere instrument of the "king's friends." According to Lord Chesterfield, the "pub-

[1] *Grenville Papers*, II., 32–40, 85, et seq.
[2] Stubbs, *Const. Hist. of Eng.*, II., 311.

lic looked still at Lord Bute through the curtain which indeed was a very transparent one." Grenville could not patiently brook such an invasion of his province. He reproached the king for withholding confidence from his minister. "As fond of power as the king himself,—and with a will as strong and imperious,—tenacious of his rights as a minister, and confident in his own abilities and influence,—he looked to parliament rather than to the crown, as the source of his authority." [1] The king, finding himself opposed and thwarted by a ministry which had been forced upon him, resolved to get rid of it as soon as practicable.[2] This he first attempted in August, 1763, when Bute was commissioned to invite Pitt to form a new administration; but the project was dropped when it was learned that Pitt proposed to recall Earl Temple and the very Whig leaders whom his majesty had said he should never suffer to "come into his service while he lived to hold the scepter." [3]

In 1765 the crisis came in a contest over the regency bill. The king had just recovered from his fit of insanity, and the heir to the throne was a child two years of age. Clearly there was need of providing for the exercise of the royal functions in cases of emergency. Slighting his cabinet, the king called upon Lord Holland for advice. In turn

[1] May, *Const. Hist. of Eng.* (Am. ed. of 1899), I., 34, 35.
[2] *Grenville Papers*, II., 83–85, 89.
[3] *Ibid.*, 93, 105, 196; *Bedford Correspondence*, III., 224.

the offended ministers, when commanded to bring in a bill for a regency, attempted to disqualify the king's mother, the ambitious princess dowager, who was disliked as the friend and former patroness of Bute. Wearied by the complaints of Grenville and the blunt speeches of Bedford,[1] the king now determined to get rid of the ministry at the cost even of a complete surrender to the detested Whigs. At his request his uncle, the duke of Cumberland, entered into negotiations with Pitt. "I am ready to go to St. James's," said the Great Commoner, "if I can carry the constitution with me." He was promised a free hand in making up a cabinet; general warrants were to be condemned; while Barré, Conway, and others, who had been deprived of their offices for their votes in Parliament, were to be restored. At a personal interview with the king in June, Pitt declared himself against the late acts for taxing the colonies and restraining their trade. On this point, too, the king seemed to yield. Pitt, therefore, invited his brother-in-law, Earl Temple, to join him in forming an administration; but Temple, at variance with Pitt regarding the Stamp Act, declined to serve, and drew nearer to Grenville, also his brother-in-law. Without his aid Pitt thought it unwise to proceed.

The triumph of Grenville now seemed complete.

[1] Walpole, *Memoirs of George III.*, II., 159–162, 179, 182; *Bedford Correspondence*, III., pp. xliii.–xlv., 286–288; *Grenville Papers*, III., 194.

Already, among the conditions of remaining in office, the ministry had forced the king to promise that Bute should not be suffered to interfere in the conduct of the government "in any manner or shape whatever."[1]

At this juncture Cumberland succeeded in forming an opposition ministry. July 10, while busy with plans for the execution of the Stamp Act, Grenville was summoned to St. James's to lay down his office. "He besought his majesty, as he valued his own safety, not to suffer anyone to advise him to separate or draw the line between his British and American dominions"; declared that the colonies were the "richest jewel of his crown"; and that "if any man ventured to defeat the regulations laid down for the colonies, by a slackness in the execution, he should look upon him as a criminal and the betrayer of his country."[2]

The new ministry seemed likely to be more favorable to the American cause. As premier at the head of the treasury was placed the Marquis of Rockingham, leader of the Whig aristocracy, who had been deprived of the lord-lieutenancy of his county for his vote against the peace in 1763.[3] Moreover, it seemed fitting that General Conway, who had opposed the Stamp Act and was likewise a

[1] *Grenville Papers*, III., 41, 184–186; Walpole, *Memoirs of George III.*, II., 175; Adolphus, *Hist. of Eng.*, I., 179.
[2] *Grenville Papers*, III., 211–216.
[3] Albemarle, *Memoirs of Rockingham*, I., 154–159.

victim of the royal proscriptions, should become secretary of state for the southern or colonial division. But the ministry was weak, containing not a single man of conspicuous ability.

Yet in no way was Grenville's fall due to the Stamp Act. During Cumberland's negotiations for a new ministry colonial affairs were not even mentioned; and for six months after Rockingham came to power Pitt's views regarding American taxation seem to have been unknown to the ministry.[1] "It was probably a complete surprise to them to learn that it [the Stamp Act] had brought the colonies to the verge of rebellion, and in the first months of their power they appear to have been quite uncertain what policy they would pursue."[2]

The English people were divided on the issue. The landed aristocracy in general looked upon the colonists as rebels, and would have compelled obedience by military force. On the other hand, the merchants of many cities and towns petitioned for repeal. They said that the "colonists were indebted to the merchants of this country to the amount of several millions sterling for English goods which had been exported to America; that the colonists had hitherto faithfully made good their engagements, but that they now declared their inability to do so; that they would neither give orders for new goods nor pay for those which they

[1] See Cumberland's memorial, in Albemarle, *Memoirs of Rockingham*, I., 185–203, 269. [2] Lecky, *England*, III., 361.

had actually received; and that unless parliament speedily retraced its steps, multitudes of English manufacturers would be reduced to bankruptcy. In Manchester, Nottingham, Leeds, and many other towns, thousands of artisans had been thrown out of employment. Glasgow complained that the stamp act was threatening it with absolute ruin, for its trade was principally with America, and not less than half a million of money was due by the colonists of Maryland and Virginia alone" to its merchants.[1]

While the ministry was still undecided the king saw clearly that the crisis was of vital meaning. He declared himself "provoked" and "humilitated" by the riots and the surrender of the stamps in New York. To Secretary Conway on December 5, 1765, he wrote: "I am more and more grieved at the accounts of America. Where this spirit will end is not to be said. It is undoubtedly the most serious matter that ever came before parliament; it requires more deliberation, candour, and temper than I fear it will meet with."[2] Already, on October 3, the Privy Council had reported to him that the question was of too "high a nature" for its determination, and "proper only for the consideration of parliament."[3]

When after recess Parliament came together,

[1] Lecky, *England*, III., 362; Cobbett-Hansard, *Parl. Hist.*, XVI., 133–137; Walpole, *Memoirs of George III.*, II., 269–297.
[2] Albemarle, *Memoirs of Rockingham*, I., 256.
[3] Almon, *Prior Documents*, 38.

January 14, 1766, the king submitted to its "wisdom" the papers relating to the Stamp Act in America.[1] Now began one of the most memorable debates in the constitutional history of England. The line of party division was speedily drawn. Repeal of the act was urged by Conway, Camden, and Pitt; while a powerful opposition was led by Mansfield, Bedford, and Grenville, around whom rallied the representatives of the Tory aristocracy, with the friends of the king, who resolutely opposed the repeal and carefully watched the proceedings of Parliament. The opposition rejected the distinction between internal and external taxation, and strenuously asserted the legislative supremacy of Parliament over the colonies in all cases whatsoever. Nugent insisted that the "honours and dignity of the kingdom obliged us to compel the execution of the stamp act, except the right was acknowledged, and the repeal solicited as a favour."

Grenville severely censured the ministry for failing to give earlier notice of the commotions in America. These, he said, "began in July, and now we are in the middle of January; lately they were only occurrences, they are now grown to disturbances, to tumults and riots. I doubt they border on open rebellion; and if the doctrine I have heard this day," from Mr. Pitt, "be confirmed, I fear they will lose that name to take that of revolution. The govern-

[1] They are in Cobbett - Hansard, *Parl. Hist.*, XVI., 112, et seq.; and Almon, *Prior Documents*, 38–57.

ment over them being dissolved, a revolution will take place in America. I cannot understand the difference between external and internal taxes. They are the same in effect, and only differ in name. That this kingdom has the sovereign, the supreme legislative power over America, is granted. It cannot be denied; and taxation is a part of that sovereign power. . . . Ungrateful people of America! Bounties have been extended to them. . . . You have relaxed in their favour, the act of navigation, that palladium of the British commerce." [1]

The most notable argument on this side was made by Chief-Justice Mansfield in the House of Lords. He spoke to the "question strictly as a matter of right." The colonies, he insisted, had always been subject to the supreme jurisdiction of Parliament. Duties have been laid upon them "affecting the very inmost parts of their commerce. . . . There can be no doubt, my lords, but that the inhabitants of the colonies are as much represented in parliament, as the greatest part of the people of England are represented; among nine millions of whom there are eight which have no votes in electing members of parliament. Every objection, therefore, to the dependency of the colonies upon parliament, which arises to it upon the ground of representation, goes to the whole present constitution of Great Britain; and I suppose it is not meant to

[1] Almon, *Prior Documents*, 60, 61; Cobbett-Hansard, *Parl. Hist.*, XVI., 101–103.

remodel that too." Like Grenville, he wholly rejected the distinction between external and internal taxation. "For nothing can be more clear than that a tax of ten or twenty per cent. laid upon tobacco, either in the ports of Virginia or London, is a duty laid upon the inland plantations of Virginia, a hundred miles from the sea, wheresoever the tobacco may be grown."[1]

From the lawyer's stand-point the argument of Mansfield in support of the theory of virtual representation seems conclusive.[2] As a mere matter of strict legalism the colonists may have been represented in Parliament and bound by its legislative acts, whether imposing external or internal taxation. Yet true statesmanship might render a very different decision. Abstract justice might demand a new precedent to establish a new law. How else has the constitution of England been built up unless by thus yielding to the advancing needs of the people under changing conditions? Possibly that which seemed to transcend the imagination of Mansfield had actually come to pass? If, indeed, the existing constitution was really such as he described, had not the hour come for reorganization?

Pitt took a more statesman-like position. In his view the contention of the colonists was sustained by the spirit of the constitution. "The subject of

[1] Goodrich, *British Eloquence*, 148–151; Cobbett-Hansard, *Parl. Hist.*, XVI., 172-177.

[2] Campbell, *Lives of the Chancellors*, V., 206.

this debate is of greater importance than ever engaged the attention of this house, that subject only excepted, when, nearly a century ago, it was a question whether you yourselves were to be bond or free. The manner in which this affair will be terminated will decide the judgment of posterity on the glory of this kingdom, and the wisdom of its government during the present reign." "Taxation," he declared, "is no part of the governing power"; and he denounced "the idea of a virtual representation of America" in the House of Commons as the "most contemptible that ever entered into the head of a man. . . . There is a plain distinction between taxes levied for the purpose of raising revenue and duties imposed for the regulation of trade." Therefore, let the Stamp Act be repealed. "At the same time, let the sovereign authority of this country over the colonies be asserted in as strong terms as can be devised, and be made to extend to every point of legislation, that we may bind their trade, confine their manufactures, and exercise every power whatsoever, except that of taking their money out of their pockets without their consent." [1]

Thus Pitt enforced the argument already presented by the American Congress and the American pamphleteers. "To what purpose," Otis had re-

[1] *Speeches of Chatham* (ed. of 1848), 70–79; Almon, *Prior Documents*, 57–59, 61–64; Almon, *Anecdotes of Pitt*, I., 424, et seq.; Cobbett-Hansard, *Parl. Hist.*, XVI., 97–101, 103–108.

torted in reply to Soame Jenyns, "to ring everlasting changes to the colonists on the cases of Manchester, Birmingham, and Sheffield, who return no members? If these now so considerable places are not represented, they ought to be! Besides, the counties in which those respectable abodes of tinkers, tinmen, and pedlars lie, return members; so do all the neighboring cities and boroughs. In the choice of the former, if they have no vote, they must naturally and necessarily have a great influence. I believe every gentleman of a landed estate, near a flourishing manufactory, will be careful enough of its interest."[1]

While the Congress was in session, precisely three months before Pitt's speech was delivered, Daniel Dulany had likewise exposed the fallacy of the argument from virtual representation, as consisting of "facts not true, and of conclusions inadmissible." For in Great Britain the interests "of the non-electors, the electors, and the representatives, are individually the same; to say nothing of the connection among neighbors, friends, and relatives. The security of the non-electors against oppression, is, that their oppression will fall also upon the electors and the representatives. The one can't be injured, and the other indemnified. Further, if the non-electors should not be taxed by the British parliament, they would not be taxed at all," a "solecism in the political system." On the other

[1] Otis, *Considerations*, 6–10, 51.

hand, "the inhabitants of the colonies are, as such, incapable of being electors, the privilege of election being exercisable only in person, and therefore if every inhabitant of America had the requisite freehold not one could vote, but on the supposition of ceasing to be an inhabitant of America, and becoming a resident in Great Britain, a supposition which would be impertinent, because it shifts the question." Moreover, the colonies may be taxed by their own legislatures, so that "there would not necessarily be an iniquitous and absurd exemption, from their not being represented by the house of commons."[1] Dulany's able pamphlet, it is clear, had a direct influence on the form in which Pitt expressed his views.

The most dramatic incident of the struggle for repeal was the examination, February 13, 1766, of Benjamin Franklin before the committee of the House of Commons. Doubtless some of the more telling leading questions were artfully planned beforehand; yet never were Franklin's ready wit, his shrewdness and common-sense shown to better advantage. His position was a delicate one; for if possible he had to defend the American cause without wounding the sensibilities of the British nation. When questioned, he said that the colonists already paid "many and very heavy taxes." In Pennsylvania these taxes were levied "for the

[1] Dulany, *Considerations on the Propriety of Taxing the Colonies*, 3–8.

support of the civil and military establishments of the country, and to discharge the heavy debt contracted in the last war." "Are not all the people very able to pay those taxes?" "No. The frontier counties, all along the continent, having been frequently ravaged by the enemy and, greatly impoverished, are able to pay very little tax." Therefore "our late tax laws do expressly favour those counties, excusing the sufferers." "Are not the colonies, from their circumstances, very able to pay the stamp duty?" "In my opinion there is not gold and silver enough in the colonies to pay the stamp duty for one year." Moreover, from the lack of post-roads the stamps could not everywhere be distributed; and if there were roads, "sending for stamps by post would occasion an expense of postage, amounting in many cases to much more than that of the stamps themselves."

"Don't you know that the money arising from the stamps was all to be laid out in America?" "I know it is appropriated by the act to the American service; but it will be spent in the conquered colonies, where the soldiers are; not in the colonies that pay it." "Do you think it right that America should be protected by this country and pay no part of the expense?" "That is not the case. The colonies raised, clothed, and paid, during the last war, near twenty-five thousand men, and spent many millions." "Were not you reimbursed by parliament?" "We were only reimbursed what, in

your opinion, we had advanced beyond our proportion, or beyond what might reasonably be expected from us; and it was a very small part of what we spent. Pennsylvania in particular, disbursed about five hundred thousand pounds, and the reimbursements, in the whole, did not exceed sixty thousand pounds."

"Does the distinction between internal and external taxes exist in the words of the charter" of Pennsylvania? "No, I believe not." Then, said Charles Townshend, may they not on the same ground of Magna Charta and the petition of right "object to Parliament's right of external taxation?" Franklin's answer was prophetic. "They never have hitherto. Many arguments have been lately used here to show them that there is no difference, and that if you have no right to tax them internally, you have none to tax them externally, or make any other law to bind them. At present they do not reason so; but in time they may possibly be convinced by these arguments." [1]

The king was stubbornly opposed to the repeal; and to influence legislative action his opinion was made known by Lord Strange, Lord Bute, and others to members of Parliament.[2] Even Mans-

[1] For the examination, see Franklin, *Works* (Bigelow's ed.), III., 409–450; Almon, *Prior Documents*, 64–81; or Cobbett-Hansard, *Parl. Hist.*, XVI., 137–159.

[2] Albemarle, *Memoirs of Rockingham*, I., 250, 272, 292–294; *Grenville Papers*, III., 353–355, 374; Walpole, *Memoirs of George III.*, II., 257, et seq., 288, 331.

field stooped to give the dangerous advice "that, though it would be unconstitutional to endeavor by his majesty's name to carry questions in parliament, yet where the lawful rights of the king and parliament were to be asserted and maintained, he thought the making his majesty's opinion in support of those rights to be known, was very fit and becoming."[1] To frustrate this influence Rockingham acted with decision, obtaining the king's written consent to the passage of the bill.[2]

Accordingly, February 22, against Jenkinson's motion for a mere modification of the act, Conway, by a vote of 275 to 167, was given leave to bring in a bill for the total repeal of the Stamp Act. This was regarded as a decisive victory. Outside the Parliament house Grenville was hissed; while Conway and Pitt received an ovation from the crowd. On March 4 the bill passed the Commons; March 17, not without two formal protests,[3] it was carried in the Lords; and on the next day the king's assent brought to an end a contest longer and more bitter than that aroused by any measure since 1689. At the same time, unfortunately, without a division in either house, the declaratory bill became a law. This act, which Pitt called a resolution "for England's right to do what the treasury pleased with

[1] *Grenville Papers*, III., 374.

[2] Albemarle, *Memoirs of Rockingham*, I., 300, et seq. Cf. May, *Const. Hist. of Eng.*, I., 43.

[3] Rogers, *Protests of the Lords*, II., 77–89; or Almon, *Prior Documents*, 81–89.

three millions of freemen,"[1] not only asserts that the king and Parliament have "full power and authority to make laws and statutes of sufficient force and validity to bind the colonies and people of America, subjects of the crown of Great Britain, in all cases whatsoever"; but also that all resolutions or proceedings in the colonies denying such power are "utterly null and void."[2]

[1] *Chatham Correspondence*, II., 364, 365.
[2] 6 George III., chap. xii.

CHAPTER X

THE TOWNSHEND REVENUE ACTS

(1766–1767)

THE declaratory act has been represented as the price paid by a weak and divided ministry for the repeal of the stamp tax—as a solace to the offended pride and dignity of the British Parliament. This view was supported in the debate on the motion to repeal the act in 1777;[1] and there is other evidence to sustain it. If such, indeed, be the truth, it shows only more clearly how serious was the dilemma in which the short-sighted policy of Grenville had involved the government. Events were soon to prove that the price paid was very dear. For the moment the colonists united in spontaneous thank-offering for the boon of justice which had been granted them. "The repeal of the stamp act," wrote John Adams, "has hushed into silence almost every popular clamor, and composed every wave of popular disorder into a smooth and peaceful calm."[2] The Sons of Liberty ceased to meet. No one thought of separation. Nothing

[1] Cobbett-Hansard, *Parl. Hist.*, XIX., 563 et seq.
[2] Adams, *Works*, II., 203.

was needed but a moderately wise policy on the part of the home government to hold the affectionate allegiance of the American people. "A feeling of real and genuine loyalty to the mother-country appears to have at this time existed in the colonies, though it required much skill to maintain it." [1]

Such skill was utterly lacking. The rejoicings of the colonies were short-lived. From the outset some among them had favored united opposition to the declaratory act;[2] and other grounds for the revival of discontent were not wanting. First among these was the attempted enforcement of the billeting or mutiny act, which had been renewed under the Rockingham administration. The clause requiring the colonial assemblies to make provision for quartering the king's troops was held to be unconstitutional, because a command was thus laid by one legislative body upon another; and unjust, since the whole burden would fall upon the colonies where the army chanced to be located.

Resistance was first made in New York, then the headquarters of the British force in America. The requisition for supplies made by the general through the governor was granted only in part by the provincial assembly, because some of the articles demanded were such as in England were not provided for troops when in barracks. The bill making partial provision was approved by Sir Henry Moore,

[1] Lecky, *England*, III., 373.
[2] Frothingham, *Rise of the Republic*, 202, and *n.* 2.

the governor, although in his letter to the ministry he did not concede the justice of the assembly's plea.[1] He significantly added, "My Message is treated merely as a Requisition made here and they have carefully avoided the least mention of the act on which it is founded, and it is my opinion that every act of Parliament, when not backed by a sufficient Power to enforce it will meet with the same Fate." In reply to the governor's report, Shelburne, then secretary of state, announced that the king expected obedience to the act in its full extent and meaning; thus needlessly laying up ample store of future trouble. The assembly refused to comply, and "in their answer to the governor's speech to them, called in question the authority of parliament." The result was the suspension of the assembly by the Townshend act, presently to be considered.

Massachusetts was following the example of New York. A company of artillery, recently arrived in Boston, had been lodged in the barracks at Castle William, and, according to custom, Governor Bernard, with the advice of the council, had issued a warrant on the treasury to pay the expense of providing it with fire and candles. At the January session, 1767, the house of representatives expressed their resentment at this proceeding. The governor was asked "whether any provision has

[1] Hutchinson, *Hist. of Mass. Bay.*, III., 168; *N. Y. Docs. Rel. to Col. Hist.*, VII., 821.

been made, at the expense of this government, for his Majesty's troops lately arrived in this harbor, and by whom?" and whether his "Excellency has reason to expect the arrival of any more to be quartered in this province?" In his answer Bernard alleged that provision for the artillery had been made in pursuance of the late billeting act of Parliament, and that he had "received no advice whatever of any other troops being quartered in this province." Whereupon the house promptly responded "that it is by virtue of the royal charter alone, that the Governor and Council have any authority to issue money out of the treasury, and that only according to such acts as are, or may be, in force within this province."

At the same time the house claimed for itself "the privilege of originating, granting, and disposing of taxes"; and expressed "concern that an act of Parliament should yet be in being, which appears to us to be as real a grievance" as the stamp tax, "which so justly alarmed the continent." In reply the governor, shifting his ground, claimed that his course was fully "justified not only by the usage of this government, but by the authority of the General Court itself";[1] and so the incident was allowed to drop.

Another measure of the British government, reasonable and just in itself, though impolitic, was destined, partly through the manner of its execu-

[1] Bradford, *Mass. State Papers*, 105–108.

tion, to become a source of irritation. Under authority of a resolution of the House of Commons, Secretary Conway in a circular letter asked the colonial assemblies to compensate the sufferers for the property destroyed in the Stamp Act riots. In most cases the colonies were slow in responding. The request was looked upon as unwarranted interference by Parliament: it was insisted that indemnity, if granted, should be the free and spontaneous act of the people through their own preresentatives.

In Massachusetts, notably, resistance was provoked through the unwise conduct of the governor. Bernard was honest and well-meaning, but short-sighted in policy and arrogant in manner. He was as indiscreet in his acts as he was violent in his speeches. Earlier he had sympathized with the popular cause. He had opposed the Sugar Act as unjust and the Stamp Act as inexpedient, while maintaining in principle the right of parliamentary taxation. But in his confidential correspondence with the ministry he zealously urged a remodelling of the colonial charters in favor of a uniform and more centralized type of government; and his injudicious course in the present crisis proved him entirely unfit for his post.

At the meeting of the general court on May 29, 1766, when the repeal of the Stamp Act was announced, Bernard managed to get into a bitter quarrel with the house. First he vetoed the choice

of James Otis as speaker; then the house declined to re-elect to the council the lieutenant-governor, the secretary, the attorney-general, and one of the judges of the superior court; in revenge the governor negatived the choice of six persons belonging to the popular party. Thus he put himself thoroughly in the wrong; for the house had the clearest right to ignore the officers of the crown in the choice of councillors, if it saw fit. According to Lieutenant-Governor Hutchinson, who was himself thus rejected, Bernard "had equal right to declare his disapprobation of the persons elected. . . . Governors, to avoid giving offence, had, from disuse, almost lost their right of negativing the council. The house had kept up their right by constant use, though never by making so great a change at once, except in one instance, at the time of the land bank." [1]

The house did not complain of the governor's exercise of his legal authority; but Bernard, by impugning his adversaries' motives, delivered himself into their hands. He petulantly accused them of attacking the government "in form"; of having the "profest intention to deprive it of its best and most able servants, whose only crime is their fidelity to the Crown"; and, referring to his vetoes, he declared himself "obliged to exercise every legal and constitutional power to maintain the king's authority against this ill judged and ill timed oppugnation of it." These and similar indiscreet

[1] Hutchinson, *Hist. of Mass. Bay*, III., 149.

utterances in his speech gave the house a decided advantage, of which in its reply it made unsparing use.[1]

A few days later the governor took another false step. On June 3, in imperious tone, he placed before the council and house what he styled the "requisition" for compensation, "based on a resolution of the house of commons"; thus using the word which both the Commons, after debate, and Conway, in his letter, had carefully avoided.[2] "The authority with which it is introduced," he said, "should preclude all disputation about complying with it." At the same time, in terms which were construed as a threat to take away the charter, he attacked the house for excluding Hutchinson and the other officials from the council. Very naturally the house declined to consider the requisition before it had consulted the towns; and not until the next general court in November was a bill finally passed, "granting compensation to the sufferers, and general pardon, indemnity, and oblivion to the offenders, in the late times."[3] Even the fines already paid by the latter were returned. It is, perhaps, not surprising that the bill was vetoed by the king; but not before the money had been paid in accordance with its provisions. These incidents are here dwelt

[1] Bradford, *Mass. State Papers*, 75–81. Cf. Hutchinson, *Hist. of Mass. Bay*, III., 149, 150.

[2] Bancroft, *United States* (ed. of 1885), III., 219.

[3] Bradford, *Mass. State Papers*, 81–84, 93–98, 100.

upon, because such unseemly bickerings, often provoked by the folly of the royal governors, had much to do with the development of revolutionary sentiment.

Meantime, in England, events of the greatest importance for the colonies were taking place. Already, in July, 1766, the feeble administration of Rockingham had fallen. Grafton became nominal head of the new ministry; while its real head was Pitt, who, to the disappointment of his friends throughout the world, presently entered the House of Lords as Earl of Chatham. To Conway was given the leadership of the Commons; Shelburne took charge of colonial affairs; Camden became lord chancellor; and, against the judgment of Pitt, Charles Townshend was intrusted with the exchequer. The administration soon proved itself to be weak and disunited. Pitt, enfeebled by disease and depressed by the consciousness of waning popularity due to his acceptance of a peerage, soon ceased to take active part in public business. In October he retired to Bath to try the virtue of its healing waters. At once Charles Townshend came forward to seize the leadership of the ministry. "From this time," admits Lecky, "the English government of America is little more than a series of deplorable blunders."[1]

January 26, 1767, Grenville moved that "America, like Ireland, should support an establishment of

[1] Lecky, *England*, III., 379.

her own." [1] The burden, he said, would be about £400,000, or a sum nearly equal to one shilling in the pound of the land tax. In the debate which ensued, Townshend declared that "administration has applied its attention to give relief to Great Britain from bearing the whole expense of securing, defending, and protecting America and the West India islands; I shall bring into the house some propositions that I hope may tend, in time, to ease the people of England upon this head, and yet not be heavy in any manner upon the people in the colonies. I know the mode by which a revenue may be drawn from America without offence." Continuing, he said he was still a firm advocate of the stamp tax; that he laughed at the "absurd distinction" between internal and external taxes, a distinction "ridiculous in the opinion of everybody except the Americans"; and he pledged himself to find a revenue nearly sufficient for the military expenses in America.[2] The ministers were astonished at this bold usurpation of leadership. Not only was Townshend's pledge given without knowledge of the cabinet, but in opposition to the "known decision of all of its members." Yet in the absence of Chatham neither Grafton nor any one else had sufficient authority to demand the dismissal of the insubordinate minister.[3]

[1] Lecky, *England*, III., 380.

[2] *Chatham Correspondence*, III., 178, 179, 182–188; *Grenville Papers*, IV., 211, 222. Cf. Bancroft, *United States* (ed. of 1885), III., 338.

[3] Lecky, *England*, III., 381.

Soon after this, on February 27, the government was defeated on an important measure. Acting on the suggestion of Grenville already mentioned, the land tax was reduced by one shilling in the pound; thus in effect making another attempt to secure a revenue from America inevitable. Chatham was too ill to cause the removal of Townshend, and from this time onward practically ceased to take any part in the cabinet councils.

The chancellor of the exchequer now dominated the ministry; and so he proceeded to take the first step in the redemption of his pledge. In May, 1767, he secured the enactment of three laws; by one the New York assembly was suspended until it should comply with the mutiny act; by another a board of commissioners of the customs, with large powers, was established in America to administer the acts of trade; while a third laid an import duty on glass, red and white lead, paper, and tea.[1] It was expected that this tax would produce about £40,000, to be expended under the king's sign-manual in providing salaries for the royal judges and governors in America. By this revenue act writs of assistance were formally legalized; and the drawback of the import duty hitherto allowed the East India Company on the re-exportation of china and earthenware to America was discontinued. This was offset by granting a drawback on re-exportation of the entire duty paid in England on

[1] 7 George III., chaps. xli., xlvi., lix.

coffee and cocoa produced in America; and by a separate act[1] a similar drawback for five years was granted on the re-exportation of tea from England to Ireland or the colonies.

Townshend professed to believe that the Americans would submit to his revenue law, because, unlike the Stamp Act, it established an "external" tax on imports. The result soon showed how fatally he deceived himself. The new measure was clearly more dangerous than the old. Like the latter, it created a tax for revenue; but now the revenue was to be used in giving the crown complete control of the colonial governors and the colonial judges. The assemblies would no longer have any check upon them. So long as the abuse existed of appointing the provincial judges during the king's pleasure, to make them solely dependent upon the crown for their salaries would be to invite corruption and tyranny; and the evils sure to arise from the similar position of the royal governors would be nearly as bad.

Moreover, the new policy was inaugurated just after the colonists were elated by a signal victory in the repeal of the Stamp Act. A notable change was taking place in their attitude regarding the authority of Parliament. Many of the leaders no longer drew the line at internal taxation for revenue. Already in the debate on the request for indemnity, Joseph Hawley of Massachusetts, had won the

[1] 7 George III., chap. lvi.

approval of Otis by declaring that Parliament "has no right to legislate for us." From this time onward the popular cry of "No representation, no taxation" was rapidly changed for "No representation, no legislation."[1]

Everywhere in the colonies the Townshend acts suspending the functions of the New York assembly and imposing a tax for revenue were regarded as unconstitutional. Once more the continent was roused to discussion: non-importation agreements were again signed; resolutions, addresses, and memorials were again prepared; the printing-press became active. But in the outset the new movement was ominously free from violence; the people were learning the value of self-restraint. November 20, when the revenue act was to take effect, passed quietly away.

In this crisis the best expression of popular sentiment came from John Dickinson, of Pennsylvania. In the *Farmer's Letters*, published before the close of 1767, he endeavored "to convince the people of these colonies, that they are, at this moment, exposed to the most imminent dangers; and to persuade them, immediately, vigorously, and unanimously, to exert themselves, in the most firm but most peaceable manner, for obtaining relief." Liberty's cause is "of too much dignity, to be sullied by turbulence and tumult. It ought to be maintained in a manner

[1] Bancroft, *United States* (ed. of 1885), III., 234; Lecky, *England*, III., 374.

suitable to her nature. Those who engage in it should breathe a sedate yet fervent spirit, animating them to actions of prudence, justice, modesty, bravery, humanity, and magnanimity." He repudiates the thought of independence. "Let us behave like dutiful children, who have received unmerited blows from a beloved parent"; but "let these truths be indelibly impressed on our minds: that we cannot be happy, without being free; that we cannot be free, without being secure in our property; that we cannot be secure in our property, if, without our consent, others may, as by right, take it away; that taxes imposed on us by parliament, do thus take it away." "Great Britain claims and exercises the right to prohibit manufactures in America. Once admit that she may lay duties upon her exportations to us, for the purpose of levying money on us only, she then will have nothing to do but to lay those duties on the articles which she prohibits us to manufacture, and the tragedy of American liberty is finished." [1]

Organized action against the new measures was first taken in Massachusetts. October 28, 1767, the Boston town-meeting [2] renewed the non-importation agreement, and its proceedings were published in the newspapers under the heading, "Save your

[1] Dickinson, *Letters from a Farmer*, in his *Political Writings*, I., 167–173, 275. Cf. Tyler, *Lit. Hist. of Am. Rev.*, I., 237–240.

[2] *Boston Town Records, 1758–1769*, 220; Frothingham, *Rise of the Republic*, 209.

money, and you save your country." The leading spirit in the assembly, which came together December 30, was its clerk, Samuel Adams. In January, 1768, the house, after long discussion, adopted a letter to DeBerdt, the colonial agent, written by Adams, and intended to be placed before the ministry. Letters were also sent to Chatham, Camden, Rockingham, and others, while a loyal petition was presented to the king. In these documents the old arguments against parliamentary taxation were renewed, and the recent acts were characterized as unjust and unconstitutional. February 11, 1768, a circular letter to the other assemblies on the continent was adopted. In this letter, which, like the petition to the king, was drawn by Samuel Adams, the house gave an account of its own action, and suggested the need of harmony "upon so delicate a point." [1] All these papers are admirable in form and very moderate in tone. The general supremacy of Parliament under the constitution is frankly admitted; all thought of independence is disclaimed; while the dangerous tendency of the recent legislation is pointed out.

The circular letter drew forth sympathetic replies from the assemblies of New Hampshire, Virginia, New Jersey, and Connecticut, with cordial letters from the speakers of the houses of Georgia, South Carolina, and Rhode Island. The action of Virginia is noteworthy. Not only was the course

[1] MacDonald, *Select Charters*, 330–334.

taken by Massachusetts approved, but her example was imitated in a circular letter to the other colonies calling upon them to unite in her petition for a redress of grievances.[1]

September 4, 1767, that brilliant but rash and shallow politician, Charles Townshend, died, "leaving to his successors the legacy of his disastrous policy in America, but having achieved absolutely nothing to justify the extraordinary reputation he possessed among his contemporaries."[2] His place as chancellor of the exchequer was taken by Lord North, and a few months later Lord Hillsborough was placed in charge of the new office of secretary of state for the colonies. With these and some other changes, the government came into the hands of Bedford's friends, who were bent on enforcing the supremacy of Parliament.

Royal officials in America represented the colonists as aiming at independence, and their opposition to the Townshend acts as riotous violations of the law. In particular the new commissioners of customs wrote to the lords of the treasury that a design had been formed in Boston to force them, on March 18, the anniversary of the repeal of the Stamp Act, to renounce their commissions. "The governor and magistracy," they asserted, "have not the least authority or power in this place. We depend on the favor of the mob for our protection. We cannot

[1] Frothingham, *Rise of the Republic*, 213.
[2] Lecky, *England*, III., 387.

answer for our security for a day, much less will it be in our power to carry the revenue laws into effect." Moreover, they applied directly to the commander at Halifax for an armed force.[1]

The circular letter of the Massachusetts house came before Hillsborough April 15, 1768, while he was angered by these false reports. At once he laid it before the cabinet. On the 21st, in the king's name he sent a letter to the governor of each of the twelve other colonies, enclosing the circular, which was described as "of a most dangerous and factious tendency," likely "to promote an unwarrantable combination, and to excite open opposition to parliament," ordering him to exert his "utmost influence to prevail upon the assembly" to take "no notice of it, which will be treating it with the contempt it deserves. If they give any countenance to this seditious paper, it will be your duty to prevent any proceedings upon it by an immediate prorogation or dissolution." The next day he wrote to Bernard, commanding him to "require of the house of representatives, in his majesty's name, to rescind the resolution which gave birth to the circular letter of the speaker, and to declare their disapprobation of that rash and hasty proceeding."[2] In effect, through these ill-advised orders

[1] Bancroft, *United States* (ed. of 1885), III., 280; *Memorial of the Commissioners*, March 28, 1768.

[2] For Hillsborough's letters, see Almon, *Prior Documents*, 203–205, 220.

the minister recklessly sent forth a challenge to controversy whose acceptance a sensitive and self-respecting people could hardly avoid. Indeed, from this moment the march of events tends straight towards the dissolution of the empire.

The royal requisition was placed by Bernard before the assembly June 21. The discussion, which lasted nine days, was opened by James Otis. He showed the absurdity of requiring the house to rescind the resolution of a preceding assembly which had already been executed. "When Lord Hillsborough knows that we will not rescind our acts," he exclaimed, "he should apply to parliament to rescind theirs. Let Britain rescind her measures, or the colonies are lost to her forever."[1] On June 30, in secret session, the house refused to rescind by a vote of 92 to 17. At the same time, in a letter to Hillsborough it "humbly" relies "on the royal clemency, that to petition his Majesty will not be deemed by him to be inconsistent with a respect to the British constitution, as settled at the revolution"; or that acquainting "their fellow subjects . . . of their having done so, . . . would not be discountenanced . . . as a measure of an inflamatory nature." In reply to Bernard's message the house defended its course and professed reverence for both Parliament and the king.[2]

[1] Frothingham, *Rise of the Republic*, 217; Bernard, *Letters*, June 28, July 16.

[2] Bradford, *Mass. State Papers*, 147–150, 155, 156.

The response of America to the letter of Hillsborough requiring the assemblies to treat the Massachusetts circular with contempt was hardly what he expected, but it was emphatic and harmonious. Everywhere the new colonial policy excited indignant remonstrance. "The people manifested their approval of the doings of their representatives by votes of thanks, by joyful demonstrations, and re-elections. County meetings and town meetings called for union, for a continuance of correspondence, and for a general congress—in some instances towns pledging life and fortune in support of their American brethren." [1]

Throughout the colonies, where any action was taken, the assemblies refused to obey the demands of the governors for enforcement of Hillsborough's requisition. On the contrary, the action of Massachusetts was commended; and sometimes petitions to the king and remonstrances to the Commons were drawn up. The reply of the assembly of Maryland to the arrogant message of Governor Sharpe gives typical expression to the popular feeling. "What we shall do upon this occasion, or whether in consequence of that Letter we shall do anything, it is not our present business to communicate to your Excellency; but of this be pleased to be assured, that we cannot be prevailed on to take no notice of, or treat with the least degree of contempt, a letter so expressive of duty and loyalty to the sovereign, and

[1] Frothingham, *Rise of the Republic*, 227, and *n.* 3.

so replete with just principles of liberty; and your Excellency may depend that, whenever we apprehend the rights of the people to be affected, we shall not fail boldly to assert and steadily endeavor to maintain and support them, always remembering, what we could wish never to forget, that by the bill of rights it is declared, 'That it is the right of the subject to petition the king, and all commitments and prosecutions for such petitioning are illegal.'"[1]

Thus the first result of the Townshend legislation was the development of American public opinion. The ultimate results, as will presently appear, were first mob-violence and then revolution.

[1] Frothingham, *Rise of the Republic*, 223.

CHAPTER XI

FIRST FRUITS OF THE TOWNSHEND ACTS

(1768–1770)

IN response to the complaints of Bernard and the commissioners, the ministry had resolved on the despatch of a military force. June 8, 1768, Gage was commanded to send troops to Boston; the admiralty was directed to station several armed vessels in the harbor; and orders were given that Castle William should be occupied by the king's troops. Before this the *Romney*, a fifty-gun ship, had been anchored in the harbor. The captain began to impress American seamen into his service, and one of the impressed men was rescued by the people. On the same day, June 10, John Hancock's sloop *Liberty* arrived in Boston laden with wines from Madeira. Attempting to inspect the cargo, the collector was seized by the crew and locked on board while contraband goods were landed and a false entry made at the custom-house. After his release the vessel was seized for the fraudulent entry, and, to prevent a rescue, moored under the guns of the *Romney*.

These events led to a riot in which the houses of

the controller and an inspector of customs were damaged; and a boat belonging to the former was burned on the common. The custom-house officers fled to the *Romney;* and the next day, informing Bernard that the "honor of the crown would be hazarded by their return to Boston," they withdrew to Castle William. On the 14th the town-meeting presented an address to Bernard, alleging that "menaces have been thrown out, fit only for barbarians"; and declaring that to "contend with the parent state" is "the most shocking and dreadful extremity; but tamely to relinquish the only security we and our posterity retain of the enjoyment of our lives and properties, without one struggle, is so humiliating and base, that we cannot support the reflection. We apprehend, sir, that it is at your option, in your power, and we would hope in your inclination, to prevent this distressed and justly incensed people from effecting too much, and from the shame and reproach of attempting too little." Furthermore, they asked the governor to order the removal of the *Romney* from the harbor.[1] Bernard gave a conciliatory answer, but declined to send away the man-of-war as being a matter beyond his authority.

There were not wanting other signs of the rise of a dangerous spirit. Already in March a cargo of wine was landed in the night and boldly carted through the streets of Boston, "under a guard of

[1] Hutchinson, *Hist. of Mass. Bay*, III., 488.

thirty or forty stout fellows, armed with bludgeons; and, though it was notorious to the greatest part of the town, no officer of the customs thought fit to attempt a seizure; nor," adds Hutchinson, "is it probable that he could have succeeded, if he had attempted it."[1] Elsewhere similar events were taking place. At Providence a custom-house officer was tarred and feathered. In Newport a citizen was killed in a quarrel with the midshipmen of a war vessel; and later a revenue-cutter was burned at the dock.[2]

Worse things were about to follow. The Townshend acts and the unwise methods of enforcing obedience were only beginning to bear their evil fruit. The news of the riot in Boston incensed the ministry. A memorial of the commissioners declared that "there had been a long concerted and extensive plan of resistance to the authority of Great Britain; that the people of Boston had hastened to acts of violence sooner than was intended; that nothing but the immediate exertion of military power could prevent an open revolt of the town, which would probably spread throughout the provinces."[3] The suggestion was at once acted upon, and two additional regiments were sent to Boston from Ireland.

The immediate results were ominous of an im-

[1] Hutchinson, *Hist. of Mass. Bay*, III., 188.
[2] Arnold, *Rhode Island*, II., 288, 294, 297.
[3] Quoted from Bancroft, *United States* (ed. of 1885), III., 297.

pending struggle. The reports that the army was to be employed to punish Boston and coerce the disobedient province caused great popular excitement. September 12, 1768, a town-meeting assembled in Faneuil Hall. It was resolved that "the inhabitants of the town of Boston will, at the utmost peril of their lives and fortunes, maintain and defend their rights, liberties, privileges, and immunities"; and it was declared that "money could not be levied, nor a standing army be kept up in the province, but by their own free consent." A day was named for fasting and prayer, and threats of repelling force by force were made. "There are your arms," said Otis, moderator of the meeting, pointing to the town's stock of muskets lying in boxes upon the floor: "when an attempt is made against your liberties, they will be delivered." By a great majority a resolution was adopted calling upon the inhabitants to provide themselves with arms, "as there is apprehension in the minds of many of an approaching war with France." [1]

Even more significant action was taken. Bernard, while admitting that troops were expected, had refused to grant the request of the meeting that he should summon the assembly, to take such measures "for the preservation of their valuable civil and religious rights and privileges, now in precarious situation, as they in their wisdom may think proper." [2] The people now disclosed their

[1] Hutchinson, *Hist. of Mass. Bay.*, III., 205. [2] *Ibid.*, 204.

capacity for self-help, anticipating the method for securing united action and party organization, which soon was to be so effectively employed. Through the selectmen a circular letter[1] was sent out calling a convention of all the towns of the province. Delegates from ninety-six places responded. The governor refused to receive their petition, which disclaimed any pretence to "authoritative or governmental acts," and requested him to call the assembly. The next day he sent word that "summoning such a meeting was an offence of a very high nature"; admonished "them instantly to separate"; and assured them that those who persisted in usurping the king's sovereignty over the province "would repent of their rashness."[2] The convention defended itself against the charge of illegal or criminal action, drew up a statement of grievances, and adjourned after a six days' session.

On the day when the convention adjourned (September 28) two regiments of the line, with artillery, arrived from Halifax. Three days later, under the guns of eight men-of-war, they were landed without opposition. "Each soldier having received sixteen rounds of shot, they marched, with drums beating, fifes playing, and colors flying, through the streets, and by four in the afternoon they paraded on Boston common."[3] At first one

[1] Hutchinson, *Hist. of Mass. Bay*, III., 492, 493.
[2] *Ibid.*, 210.
[3] Bancroft, *United States* (ed. of 1885), III., 312.

regiment was encamped on the common; and the other, after some altercation, found shelter in Faneuil Hall and the Town House. The commander demanded permanent quarters and supplies under the billeting act; but, insisting on a strict construction of the law, both the provincial council and the selectmen refused to comply so long as there was room for the troops in the barracks at the castle. In the end, after much squabbling and irritation, General Gage, who had come from New York to settle the controversy, "found it necessary to hire houses for the troops, which were obtained with difficulty, and to procure articles required by act of parliament at the charge of the crown." [1]

If the ministry was rash in appealing to military force, the Parliament which met in December—several months after it was known in England that Massachusetts had refused to rescind—took a still more hazardous step. Both houses censured the assembly for its course, condemned the non-importation agreements, and declared that the calling of the convention by the selectmen of Boston showed a design to set up independence. At the same time an address [2] was adopted expressing "sincere satisfaction in the measures" taken by the government, giving assurance of future support of like measures, and suggesting that the names of the

[1] Hutchinson, *Hist. of Mass. Bay*, III., 215.

[2] Cobbett-Hansard, *Parl. Hist.*, XVI., 476–487; Cavendish, *Debates*, I., 192–194.

more active agitators in America should be sent to one of the secretaries of state. Parliament also advised that an old statute of Henry VIII.,[1] which empowered the government to bring to England for trial prisoners accused of treason outside the kingdom, should be put in force, a measure which, says the English historian Lecky, "added a new and very serious item to the long list of colonial grievances. . . . By virtue of an obsolete law, passed in one of the darkest periods of English history and at a time when England possessed not a single colony, any colonist who was designated by the governor as a traitor might be carried three thousand miles from his home, from his witnesses, from the scene of his alleged crime."[2] In fact, we have now reached the crisis of the impending revolution; and whatever the faults of American demagogues may have been, the chief responsibility for the violence which followed rests on the shoulders of the infatuated king and his docile servants.

Once more the American people were put on the defensive; but now they were challenged to protect their dearest personal as well as their political rights. In the press the misrepresentations of the placemen were indignantly denounced. "It is enough to make a man's bones crack," said a writer in a Boston journal, "that, when the manly, fair, dispassionate arguments of the colonists in support of their rights and privileges remain totally unanswered, every

[1] 35 Henry VIII., chap. ii. [2] Lecky, *England*, III., 394, 395.

mushroom upstart and petty officer of the revenue should cry out rebels and traitors."[1]

The first protest came from Virginia, which the ministry had refrained from punishing, apparently with the view of dividing the colonial opposition. A new governor, Lord Botetourt—sensible, industrious, and in the main just—had recently arrived in the province. Among the burgesses at this time were Patrick Henry, Richard Henry Lee, and Thomas Jefferson who sat for the first time. It was understood that the governor desired that silence on political questions should be observed;[2] but this was by no means the purpose of the house. It adopted a series of resolves protesting against the ministerial policy, and in particular beseeching the king, "as the father of his people however remote from the seat of his empire, to quiet the minds of his loyal subjects of this colony, and to avert from them those dangers and miseries which will ensue from the seizing and carrying beyond sea any person residing in America, suspected of any crime whatsoever, to be tried in any other manner than by the ancient and long established course of proceeding."[3] These resolutions the speaker was ordered to send to the several assemblies on the continent, asking their concurrence. The members of the house, when it was dissolved by Lord Botetourt, retired to a private

[1] *Boston Gazette*, June 26, 1769.
[2] Frothingham, *Rise of the Republic*, 235.
[3] MacDonald, *Select Charters*, 334, 335.

residence, where they signed a non-importation agreement, probably drafted by George Mason.[1] Like agreements were signed throughout the colonies, and the Virginia resolves or similar declarations were adopted by all the assemblies.

Events in Massachusetts presaged a struggle, for the way of compromise was steadily closing. Various incidents show how the popular anger was kept alive. Under orders from Hillsborough, evidence was being collected by the governor and other crown officers to enable them to send offenders to England for trial under the act of Henry VIII. Affidavits against Samuel Adams, "sworn to before Hutchinson, were sent to England, to prove him fit to be transported."[2] This did not increase Bernard's popularity; and the publication in April, 1769, of some of his letters to the ministry in the preceding November and December not only "caused an inconceivable alienation" between him and the council, "but enraged a great part of the province, who considered the cause of the council as their own."[3]

A long letter signed by eleven members of the council was sent to Hillsborough, charging the governor with "want of candor, with indecent, illiberal, and most abusive treatment of them," with

[1] Washington, *Works* (Ford's ed.), II., 367, *n.*; Burk, *Hist. of Virginia.*, III., 345.
[2] Bancroft, *United States* (ed. of 1885), III., 332.
[3] Hutchinson, *Hist. of Massachusetts Bay*, III., 226.

"aiming at exorbitant and uncontrollable power, with a design to represent things in the worst light, with unmanly dissimulation, and with untruth." [1] A second letter was sent, criticising Bernard for recommending, contrary to the charter, that a council be appointed by royal mandamus, and accusing him of gross misrepresentations.[2]

Later the house petitioned for his recall, and in July he went to England, leaving the government in the hands of Lieutenant-Governor Hutchinson.

Quartering troops in Boston and surrounding the town with an armed fleet did not prove an effective means of reconciliation; but more than two years passed away without riot or serious collision. The soldiers had nothing to do; for in the absence of martial law they could only be employed on call of a civil magistrate. Yet they were hated and ostracized by the people, and, under the circumstances, it is not at all surprising that their "simple presence" was "treated as an intolerable grievance." [3] Unquestionably the officers and the men found themselves in a trying position; and on the whole they acted with prudence and self-control. They were often abused and insulted, scurrilous attacks upon them were made in the newspapers, and frequent affrays between the soldiers and townsmen took place.

[1] Hutchinson, *Hist. of Massachusetts Bay*, III., 228.
[2] Bradford, *Mass. State Papers*, 165.
[3] Lecky, *England*, III., 393.

"Little matters, being novelties, soon caused great uneasiness. Though the people had been used to answer to the call of the town watch in the night, yet they did not like to answer to the frequent calls of the centinels posted at the barracks, and at the gates of the principal officers . . .; and either a refusal to answer, or an answer accompanied with irritating language, endangered the peace of the town"; so the officers "relaxed the rigid rules of the army; and, at most places, no challenge was made." Moreover, the noise of fifes and drums on Sunday drew forth a petition from the selectmen asking the general to "dispense with the band."[1] During the winter of 1769 feeling became more tense. The two regiments, says Hutchinson, "were a continual eyesore to the inhabitants," and affrays became more frequent.

The long-delayed collision approached on March 2, 1770, when a fight took place between some ropemakers and soldiers of the 29th Regiment, eliciting a letter of complaint from the commander to the lieutenant-governor. March 5 occurred a tragedy which had much influence in hastening the Revolution. It was an evening of unusual excitement; according to Hutchinson the people were called into the streets by a false alarm of fire, and bands of soldiers were running about. Whether the fracas of the 2d had anything to do with what followed is not clear. A sentinel at the custom-

[1] Hutchinson, *Hist. of Massachusetts Bay*, III., 224, 270 et seq.

house was insulted and pelted by the crowd. According to some accounts he had struck a boy earlier in the evening. At his call a corporal and a squad of six men, commanded by Captain Preston, came to his aid. These were surrounded by fifty or sixty men and boys, some of them carrying bludgeons, shouting, "Cowardly rascals, lobsters, bloody-backs," and daring them to shoot. A soldier, hit by a club, fired, killing a mulatto named Crispus Attucks. At once the other soldiers discharged their muskets into the mob. Including Attucks, three persons were killed, two mortally wounded, and six injured. It is alleged that Preston gave the word to fire, but the fact is not clearly established.

As the news spread the wildest excitement prevailed in the town. Drums were beaten and the church-bells rung. The people rushed into the streets, some with arms in their hands. Captain Preston and the soldiers were arrested and committed to prison. The next day, under the leadership of Samuel Adams,[1] the town-meeting demanded that both regiments should be sent away to the castle. After some parley, as a bloody contest seemed imminent, Hutchinson consented to give the order. Seven months later the soldiers were tried before a Boston jury, John Adams[2] and Josiah Quincy ap-

[1] Frothingham, "Sam. Adams' Regiments," in *Atlantic Monthly*, June and August, 1862, November, 1863.

[2] Adams, *Works*, I., 97–114, II., 229–233.

pearing as their counsel. All were acquitted, save two, and these were lightly punished for manslaughter.

Such was the "Boston Massacre" which patriotic writers have represented as the first blood-offering for independence; and of a truth the historian who would understand the American Revolution will not belittle its significance. It may be true that immediately the townsmen were far more guilty than the soldiers. The real responsibility rests upon the statesmen who created the conditions rendering such a result almost inevitable. In that fact lies the meaning of the "massacre," and the meaning is very grave.

CHAPTER XII

THE ANGLICAN EPISCOPATE AND THE REVOLUTION

(1638–1775)

THE period of the Townshend acts, 1767–1770, marks the crisis in a long and bitter controversy which rightly belongs to the preliminaries of the American Revolution. According to Mellen Chamberlain, whose view in part agrees with that of some other writers,[1] the attempt to set up the Anglican episcopal system in the colonies must be counted among the chief causes of their separation from the parent state. He cites[2] as principal authorities John Adams and Jonathan Boucher. Who "will believe," wrote Adams in 1815, "that the apprehension of Episcopacy contributed fifty years ago, as much as any other cause, to arouse the attention, not only of the inquiring mind, but of the common people, and urge them to close thinking on the constitutional authority of parliament over

[1] Chamberlain, *John Adams*, 13, 17; Perry, *Am. Episcopal Church*, I., 394 et seq., 425. Cf. Brooks Adams, *Emancipation of Mass.*, 314 et seq.

[2] Chamberlain, *John Adams*, 30 et seq.

the colonies? This nevertheless was a fact as certain as any in the history of North America. The objection was not merely to the office of a bishop, though even that was dreaded, but to the authority of parliament, on which it must be founded"; for "if parliament can erect dioceses and appoint bishops, they may introduce the whole hierarchy, establish tithes, forbid marriages and funerals, establish religions, forbid dissenters."[1]

Similarly in 1797 Boucher insisted that it was then "indisputable" that the opposition to bishops was connected "with that still more serious one afterwards set up against civil government"; although he admits that in Virginia the fact "was not indeed generally apparent at the time." This controversy, he adds, was "clearly one great cause that led to the revolution."[2]

Here, then, if this theory be true, is a fact, much neglected by the general historian, which ought to receive due emphasis in any account of the origin of the American nation. Fortunately the researches of several American scholars, notably those of Dr. Cross, have put us in a position to follow throughout their entire course the efforts to establish bishops in the colonies, and to appreciate at something near its real value the significance of those efforts in their relation to the civil policy of Great Britain.

[1] Adams, *Works*, X., 185, 288; Chamberlain, *John Adams*, 25, *n.*

[2] Boucher, *View of the Causes of the Am. Rev.*, 150.

During the colonial era the church of England was established by law in Virginia, the Carolinas, Georgia, and Maryland. Elsewhere, save in three counties of New York, it had no legal existence, although here and there single congregations were planted. In New England particularly there was a traditional antipathy to bishops. Since the Hampden Court conference episcopal despotism was there closely associated with the absolutism of the Stuarts. The independent churches had been founded in America by those who had fled from episcopal tyranny in the old home. Episcopacy and monarchy were associated in the Puritan mind; and with the spread of democratic ideas any attempt to set up bishops, however restricted in their authority and functions, was sure to be looked upon with a jealous eye. Indeed, in Virginia, where the Anglican church was strongest, there was, mainly on secular grounds, as little inclination as in New England to welcome the institution of a hierarchy.[1]

Moreover, the earliest attempt to create an American episcopate was not auspicious. It came as a part of Laud's scheme for forcing conformity to the Anglican church upon the English settlers throughout the world.[2] In 1638, according to Heylyn, "to prevent such mischiefs," as might ensue from the "receptacle" of "schismatical persons" in New England, Laud resolved "to send a bishop over to

[1] Greene, *Provincial America* (*Am. Nation*, VI.), chap. vi.
[2] Cross, *Anglican Episcopate*, 7.

them, for their better government, and back him with some Force to compel, if he were not otherwise able to persuade Obedience. But this Design was strangled in the first Conception, by the violent breakings out of the Troubles in Scotland."[1] These troubles were not surmounted before the meeting of the Long Parliament which in 1645 sent Laud to the scaffold.

Thus through the primate the earliest attempt to establish the Anglican system in the colonies came from the government. From the same source during the following century arose several other projects,[2] although at no time did the appointment of bishops in America become an essential part of England's colonial policy. At most these isolated schemes, formed directly or indirectly under the auspices of the state, may have served to nourish the traditional dread of an Anglican hierarchy. In Massachusetts, especially, the jealousy of the rival Congregational establishment, intolerant and aggressive, was easily excited. Yet the strife regarding this subject, which finally became a cause of revolution, came immediately from another source. It arose mainly from the zeal of the American episcopal clergy and the unwise efforts of certain English prelates to establish bishops in the colonies, under influence of the well-meant appeals of the Society for Propagating the Gospel.

[1] Cross, *Anglican Episcopate*, 21, *n.* 2; Heylyn, *Cyprianus Anglicus*, 347. [2] Perry, *Hist. Colls.*, I., 160, 161, 395–399, 536–542.

Previous to the Restoration a tradition had grown up that the bishop of London ought by preference to be consulted regarding the affairs of the English churches in America. But it has been pretty clearly demonstrated that even his restricted suffragan authority in the colonies had no legal sanction until the time of Henry Compton, who was translated to the see of London in 1675.[1] When a formal inquiry[2] had disclosed this fact, at Compton's instance two new provisions were henceforth inserted in the instructions to the royal governors. Governor Culpepper, of Virginia, who was first so instructed, is required to see that the Book of Common Prayer is "read each Sunday and Holy Day," and the "Blessed Sacrament administered according to the rules of the Church of England"; while hereafter no minister may be preferred to any benefice in the colony without a certificate from the bishop of London "of his being conformable" to the doctrine of that church.[3]

In various ways Compton strove to increase his diocesan authority in the colonies. From 1685 onward, at his instance, the governors were commanded to "give all countenance and encouragm[t] in the exercise" of the jurisdiction of the bishop of London, "excepting only the Collating to Bene-

[1] Cross, *Anglican Episcopate*, 1–25.

[2] *Ibid.*, 15, *n.* 3, 25; *N. Y. Docs. Rel. to Col. Hist.*, VII., 362; *Cal. of State Pap., Col., 1675–1676*, 337, 338.

[3] *N. Y. Docs. Rel. to Col. Hist.*, VII., 362.

fices, granting licenses for Marriages, and Probate of Wills," which are reserved to the governor and the "Commander in Chief for the time being"; while henceforward no school-masters were to be "permitted to come from England and to keep school" in the province "without the license of the said Bishop."[1] With equal zeal he sought to improve the spiritual conditions of the colonial clergy.

To this end Compton "instituted the practice of appointing commissaries who from this time until the middle of the eighteenth century continued to exercise delegated authority in the colonies"; and with the aid of Archbishop Tennison, in 1701, he procured the incorporation of the Society for Propagating the Gospel in Foreign Parts. The work begun by Compton was carried further by Gibson (1723–1748), who received a royal commission authorizing him or his commissaries to hold spiritual courts.[2] In South Carolina, at least, such tribunals were vigorously employed for correcting the morals and irregularities of the clergy.[3]

Meanwhile, from its first organization the Society for Propagating the Gospel or its adherents had been clamoring for the institution of bishops in America. To this end letters, petitions, and memorials were sent to England, especially by missionaries in the

[1] *N. Y. Docs. Rel. to Col. Hist.*, VII., 363 (instructions to the governor of Jamaica). Cf. Cross, *Anglican Episcopate*, 30.

[2] For the patent or commission, see *N. Y. Docs. Rel. to Col. Hist.*, V., 849–854. Cf. Baldwin, *Jurisdiction of the Bishop of London*, 190.

[3] Cross, *Anglican Episcopate*, 80–87.

middle and the northern colonies;[1] for the established clergy of Virginia and the south were too well satisfied with the liberty which they enjoyed to invite the interference of a resident hierarchy. These efforts were prompted mainly by spiritual motives, although they eventually gave rise to bitter political strife. Bishops were needed, it was urged, for the purpose of ordination, confirmation, and a more rigorous discipline of the clergy. In England the zeal of the society was almost successful. Its scheme for an American episcopate won the sanction of Queen Anne, and a "bill was drafted and about to be introduced into parliament, when her Majesty's death put a stop to further proceedings."[2]

The new king, George I., looked coldly upon the project, and Sir Robert Walpole was too wise to try so dangerous an experiment. For a quarter of a century the agitation waned; but at the very end of Walpole's ministry it was revived in a significant way by a sermon preached before the society by Thomas Secker, bishop of Oxford. His words are ominous of the growing political trend of this discussion. "Such an establishment," he says, would not "encroach at all on the present rights of the Civil Government in our Colonies"; nor would it endanger their "dependence" as "some persons profess to apprehend . . ., who would make no manner of scruple about doing other Things much

[1] Perry, *Am. Episcopal Church*, I., 396 et seq.
[2] Cross, *Anglican Episcopate*, 101, citing contemporaries.

more likely to destroy it; who are not terrified in the least that such numbers there reject the Episcopal Order entirely; nor would perhaps be greatly alarmed, were there ever so many to reject Religion itself: though evidently in Proportion as either is thrown off, all Dependence produced by it ceases of course." [1]

Equally enlightening is the reply of the Reverend Andrew Eliot, which discloses a suspicion of the good faith of the advocates of a colonial episcopate and a dread of the encroachments of the hierarchy were it once set up. "If a prelate is introduced, some way must be found out for his support. Every art will be used to prevail with our assemblies to lay a tax; and who can assure us, that they will never be cajoled into a compliance. . . . If the provincial assemblies should refuse to tax the inhabitants for the support of a bishop, the whole strength of the Church of England will be united to procure an act of parliament" to tax the colonies for this purpose. "If this is obtained, no colony can expect an exemption," not even New England; for "we have been told, that 'when any part of the English nation spread abroad into colonies, as they continued a part of the nation, the law obliged them equally to the church of England, and to the Christian religion.'" [2]

[1] Society's *Abstracts*, 27–29, quoted by Cross, *Anglican Episcopate*, 109, *n.* 2.

[2] Eliot, *Remarks on the Bishop of Oxford's Sermon* (Mass. Hist. Soc., *Collections*, 2d series, II., 209, 210).

From this time onward the political aspects of the question became more and more pronounced. In its next phase the bishop of London took the lead. From 1748 to 1761 that see was held by Thomas Sherlock, who strove without ceasing to secure the instalment of bishops in America. He refused to receive a royal patent defining his colonial jurisdiction, and declined so far as practicable to exercise any diocesan authority in the colonies. Apparently it was his deliberate policy to force the Episcopalians in America "to demand an episcopate of their own." [1] His memorial relating to "Ecclesiastical Government in his Majesty's Dominions in America" failed to receive the approval of the Privy Council, and one of its members, Horatio Walpole, gave him solemn warning of the bitter feeling which the presentation of such a scheme would arouse. The dissenters at home who "are generally well-affected, & indeed necessary supporters to ye present establishment in state" will "be loud in their discourses and writings upon this intended innovation in America, and those in ye Colonies will be exasperated & animated to make warm representations against it to ye Government here, as a design to establish Ecclesiastical power in its full extent among them by Degrees." [2]

Walpole's letter was answered by Secker of Ox-

[1] Cross, *Anglican Episcopate*, 113 et seq.

[2] Perry, *Am. Episcopal Church*, I., 409; Walpole, in Cross, *Anglican Episcopate*, 324–330.

ford; and about the same time Joseph Butler, bishop of Durham, came to Sherlock's support. In 1750 he drew up a plan defining the principles on which an American episcopate should be set up. It is very moderate and apologetic in tone. Coercive authority over the laity is disclaimed; the maintenance of bishops is "not to be at the charge of the colonies"; and no "bishops are intended to be settled in places where the government is left in the hands of dissenters." Only spiritual motives are disclosed, although the manifest anxiety to placate opposition is highly enlightening.[1]

Still more significant was the so-called "Mayhew Controversy," which took place during Grenville's administration, 1763–1765. In a pamphlet published in 1763, Jonathan Mayhew, of Boston, attempted to show that the Society for Propagating the Gospel, neglectful of the spiritual purposes of its creation, had long had "a formal design to root out Presbyterianism," and to set up episcopacy throughout the colonies.[2] Among the replies called out by Mayhew's pamphlet was one by Secker, now archbishop of Canterbury, who claimed that as a matter of constitutional right the Episcopalians in the colonies were entitled to the ministrations of bishops; that, "in a land where there is any pretence of toleration," the members of the church of Eng-

[1] Perry, *Am. Episcopal Church*, I., 408.

[2] Mayhew, *Observations*, 103; Perry, *Am. Episcopal Church*, I., 410 et seq.

land "should have that privilege in full—should have bishops and other necessary officers." Accordingly he presented "a plan of what the proposed bishop would be allowed to do and what not to do, a plan which corresponds in its essentials to that which Bishop Butler had drawn up in 1750." [1]

In his answer, Mayhew insisted that if bishops were once introduced they would hardly be content without any of the temporal "power and grandeur" enjoyed by their brethren in England; and that "the number of Episcopalians might increase to such an extent as to attain a majority in the legislatures, and thereby secure, perhaps, not only an establishment of the Church of England, but also taxes for the support of bishops, test acts, ecclesiastical courts, and what not." [2] Little that was new in argument was advanced by either side in this discussion; but under influence of the sensitiveness created by the political contest of the hour old arguments acquired new meaning; and the controversy undoubtedly tended to draw men closer together in the rising revolutionary parties. According to John Adams, at this time the supposed design to set up an American episcopate "spread an universal alarm against the authority of parliament," by virtue of which alone it could be accomplished.[3]

[1] Cross, *Anglican Episcopate*, 146, 151.

[2] Mayhew, *Remarks*, 60 et seq., summarized in Cross, *Anglican Episcopate*, 154–156

[3] Adams, *Works*, X., 288.

The crisis in the long struggle for bishops in the colonies was reached in the pamphlet war waged between Thomas Bradbury Chandler and Charles Chauncy,[1] backed by their respective allies, in the years 1767–1771, the period of political strife caused by the measures of Charles Townshend. In 1767 the contest was opened by Chandler in his *Appeal to the Public in Behalf of the Church of England in America*, a paper prepared under the sanction of a convention of the Episcopalians of New York and New Jersey. From the religious point of view he presented a powerful argument in favor of bishops, and sketched a plan similar in character to the schemes of Butler and Secker already mentioned. Disclaiming all political purpose, he rejected as utterly groundless the assertions of some "London papers at the time of the Stamp Act agitation, to the effect that the discontent and uneasiness manifested by the colonists on that occasion were due in a great measure to the fear that bishops would be settled among them." That discontent he declared was "wholly due to what the colonists regarded as 'an *unconstitutional oppressive act.*'" [2]

Yet it is to be feared that Chandler was not quite candid in his profession of purely spiritual motives; and that he kept back political reasons which might have justified the colonial dread of the hierarchy. In

[1] Perry, *Am. Episcopal Church*, I., 414 et seq.

[2] Cross, *Anglican Episcopate*, 170, quoting Chandler, *Appeal*. Cf. Perry, *Am. Episcopal Church*, I., 416.

his letter transmitting a copy of his book to the bishop of London he admits, "There are some Facts and Reasons, which could not be prudently mentioned in a Work of this Nature, as the least Intimation of them would be of ill Consequence in this irritable Age and Country: but were they known, they would have a far greater Tendency to engage such of our Superiors, if there be any such as are governed by Political motives, to espouse the Cause of the Church of England in America, than any contained in the Pamphlet. But I must content myself with having proposed those only which could be mentioned safely, and leave the event to Divine Providence."[1]

In his elaborate answer, Chauncy, besides presenting the usual arguments in opposition, added the forcible objection to the scheme for episcopizing the colonies, that it was supported "almost wholly by the clergy, and by the laity scarcely at all." It "is to me as well as to many I have conversed with upon this head, Episcopalians among others, very questionable, whether, if the members of the Church of England, in these northern Colonies, were to give in their votes, and to do it without previous Clerical influence, they would be found to be on the side of an American Episcopate."[2] Moreover, it is highly probable that his statement would have been as true of the southern as of the northern provinces.

[1] Fulham MSS., quoted by Cross, *Anglican Episcopate*, 165, 166. [2] Chauncy, *Appeal Answered*, 135.

One other significant passage in Chauncy's pamphlet deserves mention. More boldly than any of his predecessors he questioned the good faith of the advocates of an American episcopate, and accused them of suppressing their real motives. "They have much more in design than they have been pleased to declare," he says. "We are as fully persuaded as if they had openly said it, that they have in view nothing short of a COMPLETE CHURCH HIERARCHY, after the pattern of that at home, with like officers, in all their various degrees of dignity, with a like large revenue for their grand support, and with the allowance of no other privilege to dissenters but that of a bare toleration." [1]

For our present purpose this remarkable pamphlet controversy need not be further dwelt upon. But the fact that it was accompanied by an acrimonious newspaper war,[2] in which such men as William Livingston, John Dickinson, and William Smith, provost of the College of Philadelphia, took part, seems to prove that "the episcopal question, in its political aspect, had become important in the minds of the people." The contest had its influence on the further development of the revolutionary parties. In the northern colonies the Puritans, who believed in forcible resistance to the obnoxious measures of the British government, drew

[1] Chauncy, *Appeal Answered*, 201; Cross, *Anglican Episcopate*, 175.

[2] *Ibid.*, 195–214.

apart from the Episcopalians, who generally favored a policy of "non-resistance and passive obedience." In "view of these facts," Cross is convinced, "it is at least a tenable hypothesis that the bitterness of the controversy brought out so sharply the latent hostility between Episcopalian and Puritan, that many churchmen who might otherwise have taken the side of their country were, by the force of their injured religious convictions, driven over to the royalist ranks." [1]

To what extent, then, may the agitation for an American episcopate be regarded as a cause of the Revolution? In answering this question it is highly important to consider that Virginia, where the church of England was established, was opposed to the introduction of bishops. The only serious attempt by some of the clergy to bring that to pass was severely rebuked by the house of burgesses, because it would cause "much disturbance, great anxiety, and apprehension . . . among his Majesty's faithful American subjects." [2] Thus the Virginian house placed itself beside that of Massachusetts, which three years before (1768), in a letter drafted by Samuel Adams, had ordered its agent in London to "strenuously oppose" the "establishment of a Protestant episcopate in America." [3] Furthermore,

[1] Cross, *Anglican Episcopate*, 214.

[2] Perry, *Am. Episcopal Church*, I., 419; Baldwin, *Jurisdiction of the Bishop of London*, 210; Hawks, *Contributions*, I., 126 et seq.

[3] Wells, *Life of Samuel Adams*, I., 157. Cf. Brooks Adams, *Emancipation of Mass.*, 347 et seq.

at no time after the reign of Anne was the agitation for episcopizing the colonies favored by the imperial government.

As a cause of the Revolution, therefore, it cannot be ranked with the acts of trade, the exercise of the royal prerogative, or the revenue laws. Yet it was an important factor in moulding revolutionary opinion and differentiating revolutionary parties. One may safely accept the judgment of the scholar who has most thoroughly examined the problem, that "the strained relations which heralded the War of Independence strengthened the opposition to episcopacy, rather than that religious differences were a prime moving cause of political alienation": that religious controversies "contributed, in combination with other causes, to embitter the mind of the patriots, and thus to accelerate the impending crisis." [1]

[1] Cross, *Anglican Episcopate*, 271.

CHAPTER XIII

INSTITUTIONAL BEGINNINGS OF THE WEST (1768–1775)

WHILE the orders of Hillsborough were drawing the colonies together in common opposition to the king and Parliament, the western pioneers of North Carolina were striving to redress the shameful abuses in the civil service which Tryon and the assembly had refused to remedy. The war of the Regulation has no direct connection with the Revolution. It was neither religious nor political in character. It was essentially a peasants' rising on account of economic wrongs. Hermon Husband sympathized deeply with the aggrieved people, and by wise methods did what he could to relieve them from oppression; but, contrary to the popular view, he was rather a peace-maker than a leader of rebellion.

There was little self - government in the colony. Power was centralized in the hands of the governor and a few leaders. So in the western counties the spoils of office were shared by corrupt "rings." The "grievances of the Regulators were excessive taxes, dishonest sheriffs, and extortionate fees." [1]

[1] Bassett, *Regulators of N. C.*, 142, 143, 150. Cf. Raper, *North Carolina*, 61–64, 66–68, passim.

Taxes were apportioned according to polls, every adult white man and every black man or woman being rated as a taxable. Thus relatively the burden bore more heavily upon the poor than upon the rich. Money was so scarce that often the people were unable to pay the tax when demanded without borrowing the sum needed from the local broker. The sheriff as tax-collector usually refused to grant the delay necessary for this purpose, but proceeded at once to distrain on the delinquent's property, exacting a fee for the service. The property seized was then carried to Hillsborough and sold—sometimes to a friend of the officer — "for much less than its value. The Regulators charged that officers played into each other's hands for this purpose, and there were men in Hillsborough who made large sums by dealing in such business."[1] Moreover, the sheriffs were often dishonest. In 1767 even Governor Tryon declared that because of the "illjudged lenity" of the treasurers these officials "have embezzled more than one-half of the public money ordered to be raised and collected by them"; and in 1770 an official report shows that they were in arrears to the amount of more than £66,000, counting some £15,000 due for that year.[2]

The fee system was scandalously abused. Fees of lawyers and officials were established by law;

[1] Bassett, *Regulators of N. C.*, 151. Cf. *N. C. Col. Records*, VII., 771–782.

[2] *N. C. Col. Records*, VII., 497, 984, VIII., 105, 278–281.

but in spirit the law was violated by ingeniously resolving a "service for which a fixed fee was due into two or more services," and demanding the fee for each. The people believed that the courts connived at the extortion, and that by collusion cases were postponed in order to increase the costs.

Furthermore, the people of the back country suffered greatly from the lack of courts. They demanded that the counties should be subdivided so that the number of county courts might be increased. Often they had to travel from thirty to sixty miles to attend the sessions. Judicial business was so much behind that in April, 1766, Tryon wrote that there were about one thousand cases on the docket of Halifax superior court, and no civil causes had been tried in any court in the province since November.[1]

Tryon and the eastern members of the assembly sympathized with the placemen and declined to grant the needed reforms. At length the people resolved to take the law into their own hands. Outbreaks of mob-violence took place in 1765; in some places taxes were refused in 1766; and in that year the first organized effort to bring the officials to account was made. The larger movement, known as the Regulation, extended from 1768 to May, 1771, when it was mercilessly put down in the battle of the Alamance. In the next year, despairing of gaining

[1] *N. C. Col. Records*, VII., 200, 201; Bassett, *Regulators of N. C.*, 152–154.

INDIAN DELIMITATIONS
MADE BY INDIAN TREATIES
1763-1770
SCALE OF MILES
0 50 100 200 300
1. Canada Creek
2. Wood Creek
3. Tianaderha River
4. Awandne Creek
5. Burnetts Hills
6. Tiadaghton Creek
7. Reedy River
8. Little River
Proclamation Line of 1763
Longitude West from Greenwich
BAHAMA ISLANDS
ATLANTIC OCEAN
GULF OF MEXICO
Ft. Michillimackinac
LAKE HURON
LAKE MICHIGAN
LAKE ERIE
LAKE ONTARIO
Green Bay
Detroit
Ft. Presque Isle
Ft. Niagara
Ft. Brewer
Ft. Stanwix
Oswego
Albany
NEW YORK
Ft. St. Joseph's
Ft. Sandusky
Ft. Venango
Ft. Miamis
Ft. Kittaping
Ft. Pitt
Ft. Ligonier
Ft. Burd
PENNSYLVANIA
Philadelphia
NEW JERSEY
Bedford
Baltimore
Cumberland
Winchester
Ft. Ouatanon
Vincennes
St. Louis
Cahokia
Ft. Chartres
Kaskaskia
Chiswell's Mine
VIRGINIA
Hillsboro
NORTH CAROLINA
Charlotte
Newbern
Ft. Loudoun
Ft. Prince George
Ninety Six
Camden
Wilmington
C. Fear
Ft. Charlotte
SOUTH CAROLINA
Ft. Moore
Augusta
Charleston
Beaufort
Savannah
GEORGIA
Ft. Tombecbee
Ft. Toulouse
WEST FLORIDA
Natchez
Mobile
Ft. Bute
New Orleans
EAST FLORIDA LINE 1763
St. Augustine
Ohio R.
Mississippi R.
Illinois R.
Wabash R.
Kanawha R.
Cumberland R.
Tennessee R.
Cherokee R.
Tombecbee R.
Chickasawhay R.
Yazoo R.
Pascagoula R.
Pearl R.
Mobile R.
Escambia R.
Perdido R.
Apalachicola R.
Chattahoochee R.
Flint R.
Altamaha R.
Ogeechee R.
Santee R.
Pee Dee R.
Roanoke R.
James R.
Potomac R.
Susquehanna R.
Delaware R.
Hudson R.
Mohawk R.
Oswego R.
Genesee R.
Alleghany R.
Monongahela R.
Kenhawa R.
Holston R.
Tryon Mt.
Proclamation Line of 1763
Indian Boundary Line 1768
Indian Boundary Line 1770
Indian Boundary Line 1764
Indian Boundary Line 1765
Indian Boundary Line 1768
Indian Boundary Line 1770
Indian Boundary Line 1768
Indian Boundary Line 1770
Indian Boundary Line 1768
Indian Boundary Line 1770

justice, a large number of pioneers crossed the mountains to carve out new homes in the wilderness of Tennessee.

The Regulation thus has its place in the expansion of the nation; but it is not the beginning of the Revolution. Among the leaders in the war for independence were the very men who commanded the militia against the Regulators, while the majority of the latter were Tories. Still, that the uprising took place at all is largely due to the policy of Tryon; and in another way it influenced the Revolution. "The struggle was a grand object lesson to the whole country. It set the people to thinking of armed resistance. Failure as it was, it showed how weak the British army would be in a hostile country. It taught the North Carolina troops who served with Tryon to appreciate the feelings of such an army. The two campaigns of Tryon developed the military organization of the province. When the Revolution began, it was only necessary that this organization should be put in motion." [1]

Before the arrival of the Regulators from North Carolina, events of vast import for the future nation were taking place beyond the Alleghanies. There, in the valleys of the Kentucky and the Tennessee, American institutions were being planted, the foundations of new states were being laid. In the face of perils and hardships not less appalling than those

[1] Bassett, *Regulators of N. C.*, 211.

endured by their ancestors at Jamestown and Plymouth, bold pioneers were forming "associations" for self-government, not less significant than the Mayflower compact. Long before the French and Indian War cheap arable lands were becoming scarce east of the mountains; and the westward march of settlement had already passed beyond the Blue Ridge to the rich valley of the Shenandoah. As early as 1738 the Virginia assembly had created Augusta County, bounded on the east by the Blue Ridge, and west and northwest by "the utmost limits of Virginia." [1]

Gradually interest was awakened in the opening of the West to colonization. Between the Monongahela and the Kanawha were located the lands granted to the Ohio Company in 1749; [2] and from this time onward numerous schemes for western settlement were formed. Franklin's plan of union in 1754 would have wisely placed general control of Indian affairs in the hands of the governor and council. They were to "make all purchases from Indians, for the crown, of lands not now within the bounds of particular colonies, or that shall not be within their bounds when some of them are reduced to more convenient dimensions." [3]

Not long after the Albany convention Franklin

[1] Alden, *New Governments*, 1; Hening, *Statutes*, V., 79; Brown, in Filson Club, *Publications*, VI., 23.

[2] *Dinwiddie Papers*, I., 17, *n.* 23.

[3] Thwaites, *France in America* (*Am. Nation*, VII.), chap. x.

prepared a project for planting two colonies under charters from the crown. These were to have "liberal privileges and powers of government"; for "extraordinary privileges and liberties, with lands on easy terms, are strong inducements to people to hazard their persons and fortunes in settling new countries."[1] These colonies were to be seated, one on the Scioto, and the other in what is now northwestern Pennsylvania and northeastern Ohio.[2] In 1756 Pownall communicated Franklin's scheme to the duke of Cumberland, together with a plan of his own for two barrier colonies, to protect Virginia and New England respectively. He informed the duke that the "English settlements, as they are at present circumstanced, are absolutely at a stand; they are settled up to the mountains, and in the mountains there is nowhere together, land sufficient for a settlement large enough to subsist by itself and to defend itself, and preserve a communication with the present settlements. If the English would advance one step further, or cover themselves where they are, it must be at once, by one large step over the mountains, with a numerous and military colony."[3]

In 1755 Samuel Hazard, a Philadelphia merchant, proposed to get a grant of land for "an ample colony," and to apply to the king for a charter to

[1] Franklin, *Works* (Bigelow's ed.), II., 474.
[2] Alden, *New Governments*, 4.
[3] Pownall, *Administration*, App., 47, 48.

erect the "territory into a separate government." The boundaries of this ample colony, as described, "embraced all of the Ohio, and a large part of the Mississippi valleys."[1] Apparently it was expected that the colonists would be mainly Presbyterians. "Only Protestants believing in the divine authority of the Old and New Testaments and the Trinity of the Godhead, and with lives and conversations free from immorality and profaneness, could hold office. Roman Catholics were debarred from holding land or having arms or ammunition in their possession, 'nor shall any Mass Houses or Popish Chappels be allowed in the Province.'" It is well that a plan for the government of the West, whose intolerance contrasts so unfavorably with the broad liberalism of the Ordinance of 1787, was never carried through; for with its author's death in 1758 it drops out of sight.

Another of the various schemes of this period, never realized, deserves a passing notice. At the close of the French and Indian War an Edinburgh pamphlet recommended that "Virginia, Maryland, and Pennsylvania be terminated by a bound to be fixed thus: From Lake Erie, up the river Miamis [Maumee] to the Carrying-place, from thence down the river Waback to where it runs into the Ohio, and from thence down the Ohio to the Forks of the Mississippi." Furthermore, the writer of the pam-

[1] Force, *Am. Archives*, 4th series, I., 861–867; Gist, *Journals*, 261; Alden, *New Governments*, 7–9.

phlet suggested that "the country betwixt the fresh-water Lakes, extending northwest from this proposed bound, be formed into a new Colony, which might be called Charlotiana, in honor of Her Majesty, our present most excellent Queen." The colony, it was hoped, would serve as a check to the Indian insurrections then in progress.[1]

The king's proclamation of 1763 forbade the colonial governors "to grant warrant of survey, or pass patents for any lands beyond the heads or sources of any of the rivers which fall into the Atlantic Ocean from the west or northwest," all such territory being "for the present" reserved to the royal "sovereignty" for the use of the Indians. Without the king's "special leave and licence," under severe penalty private persons were prohibited from purchasing or settling on any of the lands so reserved; but "if at any time any of the said Indians should be inclined to dispose of the said lands," the same were to be purchased in the king's name, at a public meeting of the Indians, by the governor or commander-in-chief of the colony in which they shall lie.[2]

In 1772 the Earl of Hillsborough declared that the "two capital objects" of the proclamation were to confine the colonies to territory where they could

[1] Alden, *New Governments*, 12–14, citing *Expediency of Securing Our American Colonies*.

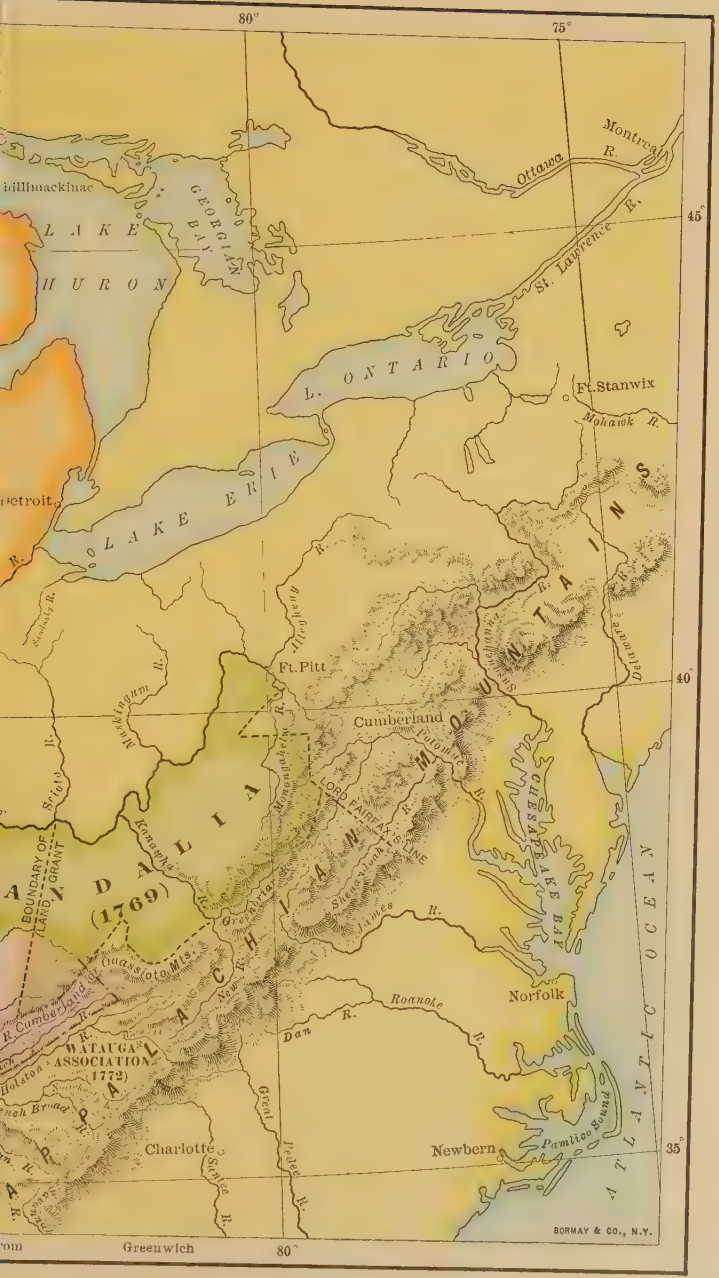
[2] Text in Franklin, *Works* (Sparks's ed.), IV., 374–379; or MacDonald, *Select Charters*, 267.

be kept "in a due subjection to, and dependence upon, the mother country," and where they would be "within the reach of the trade and commerce" of Great Britain. But there seems to be no good reason to doubt that it was really designed in good faith as a temporary expedient for securing the rights and quieting the minds of the Indians until a permanent arrangement should be made by treaty. Such was the view of Franklin and Washington; while Grenville "always admitted, that the design of it was totally accomplished, so soon as the country was purchased from the natives."[1] The proclamation dealt with the Indian problem in precisely the same spirit as did Franklin's plan of union in 1754; and that there was no intention of placing a permanent restraint on westward settlement is clearly revealed by later events.

The very next year an important step was taken towards opening the western lands for settlement. At the close of Pontiac's war in 1764, Bouquet forced a treaty of peace upon the Indians of the Ohio Valley, whose most important result was to aid in withdrawing the Indians from the territory south of the Ohio, thus preparing the way for the future settlement of Kentucky and Tennessee. "Very soon after Bouquet's conference, the last of the

[1] Franklin, *Works* (Sparks's ed.), IV., 303, 304, 339, 340; Alden, *New Governments*, 42–48; Coffin, *Province of Quebec*, 398–431; Butterfield, *Washington–Crawford Letters*, 3.

PROPOSED
WESTERN COLONIES
1763 - 1775
Modified from sketches by F.J.Turner
and G.H.Alden
SCALE OF MILES
0
50
100
150
200
250
300
LAKE SUPE
CHARLOTTIANA
(1763)
LAKE MICHIG
TRANS
Mississippi River
Wisconsin River
Green Bay
Fox R.
Missouri River
Illinois R.
Wabash R.
Kaskaskia R.
St.Louis
Cahokia
Kaskaskia
Vincennes
Tennessee R.
Cumber
Longitude
95°
90°
45
40°
35°


80°
75°
Montreal
Ottawa R.
Mackinac
GEORGIAN BAY
LAKE HURON
45°
St. Lawrence R.
L. ONTARIO
Ft. Stanwix
Mohawk R.
LAKE ERIE
Detroit
APPALACHIAN MOUNTAINS
Ft. Pitt
40°
Cumberland
LORD FAIRFAX'S LINE
CHESAPEAKE BAY
Norfolk
Roanoke R.
Dan R.
WATAUGA ASSOCIATION (1772)
BOUNDARY OF LAND GRANT
(1769)
Charlotte
Newbern
Pamlico Sound
35°
ATLANTIC OCEAN
Greenwich
80°
BORMAY & CO., N.Y.

Shawnees who lingered in that country crossed the Ohio."[1]

Only two years after the treaty a scheme was under consideration for planting three new colonies in the West. One was to be seated at Detroit, another on the lower Ohio, and a third in the Illinois country. Although the project was favored by Franklin and supported by Lord Shelburne, then secretary of state for the southern or colonial department, it was finally abandoned by the ministry in 1768.[2] In that same year, at the treaty of Fort Stanwix, the Six Nations ceded to the crown all of their claims to land south of the Ohio as far as the Tennessee. This treaty was in strict harmony with the policy inaugurated by the proclamation of 1763, and the way was now open for settlement under the royal sanction.

Accordingly, the next project for a western colony was well received. In June, 1769, the first step was taken in what is known as the Vandalia scheme. A petition was then presented to the board of trade by Thomas Walpole, Benjamin Franklin, and others for the purchase of two million four hundred thousand acres of land. At the instance of Lord Hillsborough, then at the head of the board, the project was enlarged so as to include a much greater terri-

[1] Smith, *Historical Account of the Expedition of Henry Bouquet* (*Ohio Valley Historical Series*, I.); Winsor, *Mississippi Basin*, 442–444.

[2] Alden, *New Governments*, 16–19. Cf. Franklin, *Works* (Sparks's ed.), IV., 233–241, V., 45, VII., 355.

tory with provision for a colonial government. For about £10,000 the lords of the treasury agreed to convey to the company a vast domain covering nearly all of West Virginia and the eastern part of Kentucky as far as a line drawn from the mouth of the Scioto to Cumberland Gap; while the colony or jurisdiction of Vandalia was to include this tract and the region beyond to the Kentucky River. After long consideration, in May, 1773, a report of the board of trade, prepared at the king's command, favored the project because of "the necessity there was of introducing some regular form of government in a country incapable of participating the advantages arising from the civil institutions of Virginia"; and declared that the "form and constitution of the new colony which they named Vandalia" had received attention.[1]

It is believed that the charter of Massachusetts was to be taken as a general model for the organization. The governor and other officers were to be appointed during the king's pleasure, and in effect they were made dependent upon him alone for their salaries. In the spring of 1775 the draft of the royal grant was actually ready for execution when the president of the Privy Council requested Walpole and his associates to "wait for the grant aforesaid, and the plan of government of Vandalia,

[1] Winsor, *Westward Movement*, 46–62; Brown, in Filson Club, *Publications*, VI., 13, 14; Turner, "Western State-Making," in *Am. Hist. Review*, I., 73–75; Alden, *New Governments*, 20–28.

until hostilities, which had then commenced between Great Britain and the United Colonies, should cease."[1] The further history of the Vandalia company lies beyond the period dealt with in this volume.[2]

The incident is enlightening in two ways. First, on the very eve of the Revolution, it appears to reveal the policy deliberately adopted by Great Britain in reference to her territory beyond the Alleghanies. Seemingly this was to be cut up into great proprietary domains, but with governments not unlike those of the existing royal provinces; while the provision rendering the colonial officials dependent upon the crown for their salaries is conceived in the spirit of the act "regulating" the government of Massachusetts. "If the war had broken out a little later," says a careful writer, "there seems every reason to suppose that there would have been fourteen instead of thirteen colonies to fight for independence."[3]

Again, it is significant that Virginia did not resist these proceedings as an invasion of her jurisdiction. She did, indeed, demand that all existing private claims in the region in question should be respected; but the right of the crown to bestow vacant lands and confer jurisdiction back of the mountains was not challenged. The king's proclamation had en-

[1] Alden, *New Governments*, 29, 35.

[2] Turner, "Western State-Making," in *Am. Hist. Review*, I., 81, 251 et seq.

[3] Alden, *New Governments*, 35.

tirely ignored the shadowy title of several of the colonies to the western territory; and in the ensuing period his right to do so was virtually conceded. During the discussion of the Vandalia project Franklin declared that the Alleghanies must be considered the "real limits of Virginia";[1] and Nelson, president of the Virginia council — then acting in place of the governor—said, "We do not presume to say to whom our gracious Sovereign shall grant his vacant lands. . . . With respect to the establishment of a new colony on the back of Virginia, it is a subject of too great political importance for me to presume to give an opinion upon"; but "when that part of the country shall become sufficiently populated, it may be a wise and prudent measure."[2] It was only after the declaration of independence that Virginia began to assert her exclusive western claims under her ancient charters.

While capitalists and statesmen were trying these unsuccessful plans for colonization, the hardy backwoodsmen, without leave or license, were laying the lasting foundations of future commonwealths on the western waters. The territory now embraced in the states of Tennessee and Kentucky was then a debatable ground between the aborigines of the north and those of the south. Very few Indians permanently dwelt in the region;[3] but here, perhaps

[1] Franklin, *Works* (Sparks's ed.), IV., 367.
[2] *Plain Facts*, in Alden, *New Governments*, 22, 23.
[3] Shaler, *Kentucky*, 27, 44 et seq.; Phelan, *Tennessee*, 15, 21.

for ages, the tribes had met to hunt or to fight their battles. Tennessee, not less than Kentucky, was a "dark and bloody ground." But at this time the region seemed to invite the occupancy of the whites. The treaties made by Bouquet and at Fort Stanwix tended to restrain the powerful Wabash tribes from crossing the Ohio. The territory to the south, the future states of Alabama and Mississippi, were held by the formidable nations of Choctaws, Creeks, and Cherokees. The Chickasaws, indeed, still clung to their strongholds in the bluffs of the Mississippi River in western Kentucky and Tennessee; but this occupation was not looked upon as a serious obstacle to settlement.

For twenty years the valleys of Kentucky had been visited by traders and hunters — the daring pathfinders of civilization. The head-waters of the eastern tributaries of the Mississippi River lie eastward of the main chain of the Alleghanies, and thus offer an easy road from the Roanoke and the James valleys, so that it was not difficult to start the stream of permanent settlement toward the western slope of the mountains. In 1769, Captain William Bean, from Pittsylvania County, in Virginia, built the first cabin on the Watauga, a source of the Tennessee River. He was soon followed by many other settlers, whose names for the most part are unrecorded. Among these early adventurers was Daniel Boone. A rude inscription carved on the bark of a tree commemorates

his killing of a bear; and he is believed to have spent a night in Bean's cabin near a creek which still bears his name.[1] James Robertson—like Daniel Boone a heroic figure in the winning of the West—came from North Carolina in 1770.[2]

Among those who followed him were many of the Regulators, whom misgovernment had forced from their eastern homes. By 1772 three flourishing settlements had been founded—one on the Watauga, another in Carter's Valley, and a third on the Nollichucky. It was supposed that these were within the limits of the territory claimed by Virginia, to which the Indian title had been extinguished by the treaty of 1768. Some of the lands were actually taken under the pre-emption laws of that colony. It was soon discovered that they were south of the boundary-line, in the "unorganized territory belonging to North Carolina," and that some of the settlements were made in violation of the rights of the Cherokees under the treaty of Lochaber in 1770. Therefore North Carolina declined to acknowledge the settlements and to make any provision for their government. Furthermore, many of the pioneers were by no means eager to place themselves again under the

[1] Roosevelt, *Winning of the West*, I., 138; Thwaites, *Daniel Boone*, 56; Phelan, *Tennessee*, 29.

[2] Roosevelt, *Winning of the West*, I., 177 et seq.; and especially Putnam, *History of Middle Tennessee; or Life and Times of James Robertson.*

authority of a province from whose tyranny they had just escaped.[1]

Accordingly, in true American fashion the Watauga pioneers resorted to self-help. In 1772, at a convention called for the purpose, an association was formed under a written constitution. A committee of thirteen was chosen to act as a legislative body. The executive and judicial powers were vested in five commissioners chosen by the thirteen from their own number. The committee appointed a clerk, and made provision for the record of deeds and wills. There were a sheriff and an attorney. So far as applicable, the laws of Virginia were adopted; and the government seems to have been administered with great prudence. For a time the Nollichucky settlement was not included in the association; but in 1775, being "composed for the most part of Tories," it was forced by the "Watauga people and a band of Virginians" to take the oath of fidelity to the revolutionary cause. Thereafter it formed a part of the union. For four years the "Watauga Association" was virtually an independent colony; but in 1776, on petition, it was received under the jurisdiction of North Carolina.[2]

The first planting of Kentucky affords a chapter

[1] Turner, "Western State-Making," in *Am. Hist. Review*, I., 75–77; Phelan, *Tennessee*, 32, 33.

[2] Ramsey, *Annals of Tennessee*, 134; Winsor, *Westward Movement*, 78–81; Hayward, *Tennessee*, 41; Phelan, *Tennessee*, 34.

in institutional history equally instructive and equally inspiring. Here, too, there was a preparatory period of hunting, exploration, and adventure.[1] The era of settlement began in 1769, when Daniel Boone, with five other backwoodsmen, left his "family and peaceful habitation on the Yadkin River in North Carolina, to wander through the wilderness of America, in quest of the country of Kentucke." In the spring of 1771 he returned for his "family with a determination to bring them as soon as possible to live in Kentucke," which he "esteemed a second paradise."[2] Harrodsburg, the first distinct community, was founded in 1774 by James Harrod and some forty companions. In 1775 Boonesborough was begun and protected by a fort; and at the same time similar strongholds were built at St. Asaphs, Boiling Springs, and Harrodsburg.[3]

Already, without any governmental sanction, the first step toward the creation of a new commonwealth had been taken.[4] At Hillsborough, North Carolina, on August 27, 1774, a company had been

[1] Thwaites, *Daniel Boone*, 85–96; Shaler, *Kentucky*, 59–67, Collins, *Kentucky*, I., 15; Durrett, in Filson Club, *Publications*, VII., 21 et seq.

[2] Filson, *Discovery, Settlement, and Present State of Kentucke*, 50–60; or Hart, *Contemporaries*, II., 383–385.

[3] Collins, *Kentucky*, II., 517; Roosevelt, *Winning of the West*, I., 259, 260; Bancroft, *United States* (ed. of 1885), III., 355–357, IV., 194–196.

[4] Brown, in Filson Club, *Publications*, VI., 24 et seq.; Durrett, in *ibid.*, VII., 36 et seq.; Ranck, in *ibid.*, XVI., 1–32.

formed, the members agreeing "to rent or purchase a certain territory or tract of land . . . from the Indian Tribes now in possession thereof, and to bind and oblige ourselves and our heirs each to furnish his Quota of Expenses necessary towards procuring a grant and settling the country." On the 6th of the next January the associators—Judge Richard Henderson and eight others, all from North Carolina —took the name of the "Transylvania Company." In the spring of 1775, at Watauga, a treaty was made with the Cherokees, who for £10,000 in merchandise ceded to the company a vast domain between the Ohio and the Tennessee,[1] which was called Transylvania. The proprietors at once proceeded to form a government, resolving that the people should have a voice in making their own laws. An open-air convention was called for May 23, 1775. Boonesborough was represented by six, and each of the other three settlements by four delegates, elected "by free choice of Individuals." A legislature for Transylvania was thus created, the proprietors retaining the executive authority with the right of absolute veto.

On the appointed day the convention met under the branches of a mighty elm, and listened to an opening speech by Henderson, the head of the company. We have a right to make necessary laws, he

[1] Turner, "Western State-Making," in *Am. Hist. Review*, 78; U. S. Bureau of Ethnology, *Report* (1883–1884), 148 et seq. Cf. Winsor, *Westward Movement*, 82, 97.

said, "without giving offense to Great Britain, or any of the American colonies—without disturbing the repose of any society or community under Heaven." A kind of written constitution in the form of articles of agreement between the proprietors and the delegates was then accepted; and laws were speedily enacted: establishing courts of judicature; regulating the militia; for the punishment of criminals; to prevent profane swearing and Sabbath breaking; for writs of attachment; ascertaining clerks' and sheriffs' fees; to preserve the range; to preserve the breed of horses; to preserve game.[1] After thus in five days creating a self-governing commonwealth and providing it with a body of laws, the backwoodsmen, "in good order, everybody pleased," returned to their homes.[2] The convention adjourned to the first Tuesday in the following September, but it never met again.

The history of the colony of Transylvania is soon told. It was denounced by Dunmore of Virginia, and opposed by Martin of North Carolina.[3] The proprietors discovered that their title from the Cherokees was utterly worthless; for their lands were in the region ceded to the king by the Six Nations at

[1] Ranck, *Boonesborough*, in Filson Club, *Publications*, XVI., 28, 196, 211; Butler, *Kentucky*, 508; Collins, *Kentucky*, II., 502, 508; Alden, *New Governments*, 57; Shaler, *Kentucky*, 69, 70.

[2] Henderson, *Journal;* Ranck, *Boonesborough*, in Filson Club, *Publications*, XVI., 178.

[3] Force, *American Archives*, 4th series, II., 174; Ranck, *Boonesborough*, in Filson Club, *Publications*, XVI., 181; *N. C. Col. Records*, 273, 274, 323.

Fort Stanwix, and they were also claimed by Virginia. In alarm Harrod's party among the settlers appealed to that province, asking that the territory be placed under its jurisdiction.[1] On the other hand, the proprietors sent a petition to the Continental Congress praying that Transylvania might be "added to the number of the United Colonies."[2] The petition was not granted; but at last, in December, 1776, the Virginia assembly consented to organize the greater part of the territory as the "county of Kentucky."[3]

The prosperity of the settlements in Kentucky and Tennessee had been greatly favored by the results of Lord Dunmore's war. By the victory of the Great Kanawha, October 10, 1774, they were effectually relieved of all immediate peril from the Indians of the northwest. The battle was thus of the greatest national importance. It was almost equivalent to the winning of the West; for had it not been possible to occupy this region during the early years of the Revolutionary War, it is not improbable that the treaty of 1783 might have fixed the western boundary of the United States at the Alleghanies.[4]

[1] Turner, "Western State-Making," in *Am. Hist. Review*, 80–82; Hall, *Sketches of the West*, II., 236–239.

[2] Ranck, *Boonesborough*, in Filson Club, *Publications*, XVI., 42, 224 et seq.

[3] Alden, *New Governments*, 61.

[4] Roosevelt, *Winning of the West*, I., 195 et seq., 240; Shaler, *Kentucky*, 67.

CHAPTER XIV

ROYAL ORDERS AND COMMITTEES OF CORRESPONDENCE

(1770–1773)

MEANWHILE George III. had achieved what he felt to be a signal triumph. His ten years' struggle to divide and control the Whig aristocracy had been crowned with success. The Duke of Grafton threw up his office; and on the last day of January, 1770, Lord North, leader of the new Tory party of "King's friends," succeeded him as first lord of the treasury. Through this facile servant the king was at last able to try the hazardous experiment of governing as well as reigning.

At once the new ministry had to deal with the American problem. The Townshend acts were a decided failure: they had brought the colonies close to the verge of rebellion without creating a revenue. Near the close of the session in 1769, Pownall, in the House of Commons, had shown "that the total produce of the new taxes for the first year had been less than £16,000; that the expenses of the new custom-house arrangements had reduced the net proceeds of the crown revenue in the colonies to

only £295; while the extraordinary military expenses in America" for the same period amounted to £170,000.[1] His motion for repeal was evaded by referring the subject to the next session.[2] In May, 1770, soon after the prorogation, Hillsborough sent a letter to the colonial governors, announcing the intention to repeal the Townshend act so far as it imposed duties on British goods, such duties "having been laid contrary to the true principles of commerce"; and adding that the administration had never intended to "lay any further taxes upon America for the purpose of raising a revenue."

Accordingly, on March 5 (the day of the "Boston massacre"), Lord North, the new prime-minister, moved a repeal of the Townshend act, except the part imposing a duty on tea. In support of his motion he said the act had given birth to "dangerous combinations beyond the Atlantic," and created "much dissatisfaction" among British merchants; and he declared that "it must astonish every reasonable man to think how so preposterous a law," laying a tax on many articles of British manufacture, "could originally obtain existence from a British legislature." The retention of the duty on tea he justified on the ground that through the drawback allowed the cost of tea in the provinces was actually lowered, and because it was needful to assert the supremacy of Parliament. "The proper-

[1] Hildreth, *United States*, II., 552.
[2] Cobbett-Hansard, *Parl. Hist.*, XVI., 622.

est time to exert our right of taxation is when the right is refused. The properest time for making resistance is when we are attacked."[1] An amendment by Pownall to include the tax on tea in the repeal was defeated by a large majority. Hence in April the law imposing a duty on glass, paper, and painters' colors was formally rescinded; but, in the spirit of the declaratory act of 1766, to support the right of parliamentary taxation, the duty on tea was retained.[2] In connection with this measure the government pledged itself to raise no further revenue in America; and the detested quartering act — limited by its terms to three years — was allowed quietly to expire.

The retention of the tax on tea was due largely to the personal influence of the king; and that he was able to have his way in so useless and so perilous a measure reveals the utter ineptitude of British statesmanship in this critical period. During the next three years colonial affairs were directed mainly by royal orders. In consequence of the partial repeal of the Townshend acts, commerce between England and America began to improve. The boycott of British goods had been severely felt in England: from £2,378,000, in 1768, exports to America had fallen to £1,634,000, in 1769.[3] The non-importation agreements were now discontinued,

[1] Cobbett-Hansard, *Parl. Hist.*, XVI., 853–855.
[2] 10 George III., chap. xvii.
[3] Cobbett-Hansard, *Parl. Hist.*, XVI., 855.

except that everywhere were formed associations whose members pledged themselves not to drink tea upon which the tax had been paid. For the year 1770 the amount of imports from Great Britain rose to £1,925,571, while the next year it rose to over £4,200,000.

But the discontent of the colonies was not allowed to slumber. In various ways the controversy was kept up, and feeling became more and more bitter. During the autumn of 1769 the New York assembly, then dominated by the more moderate party, complied with the billeting act and was allowed to resume its functions. For censuring this conduct of the assembly and calling a public meeting to consider it, Alexander McDougall, afterwards a major-general in the revolutionary army, was committed to prison by the house. In sympathy with the latter, the soldiers quartered in the city cut down a liberty-pole erected by the patriotic party. The townsmen retaliated; and thus frequent brawls between them and the troops took place.[1]

The royal orders now began to work their evil influence. Before Bernard's departure from the province the general court had been prorogued until January 10, 1770, to meet as usual in Boston. But in consequence of instructions from the secretary of state, announcing the king's pleasure, Hutchinson called the meeting in Cambridge for March 15.

[1] *N. Y. Docs. Rel. to Col. Hist.*, VIII., 198, 199–201, 206–209, 212–214, 220.

The house protested "against any such reason for proroguing this court, as being an infraction of our essential rights, as men and citizens, as well as those derived to us by the British constitution, and the charter of this colony";[1] and it requested a copy of the royal instructions.

Hutchinson declined the request, "because the king has been pleased to order that no letters nor instructions to his governor, shall be communicated, without his majesty's special leave"; nor would he yield to the repeated request of the house, that the general court should be called in the usual place, although as a matter of fact the king had given him discretion so to do. By a vote of 96 out of 102 the assembly declared the removal to Cambridge "a very great grievance," committed without the "least probability of serving any one good purpose," and declined to do business while "thus constrained to hold their sessions out of the town of Boston."[2] Becoming bolder, it affirmed that "the people and their representatives have a right to withstand the abusive exercise of a legal and constitutional prerogative of the crown"; and incidentally it condemned the order to rescind "the excellent resolution of a former house" as an "impudent mandate."[3]

The wrangle growing out of this useless but

[1] Bradford, *Mass. State Papers*, 194, 195. On this controversy, see Cushing, *Transition to Commonwealth*, 31 et seq.

[2] Bradford, *Mass. State Papers*, 198, 215, 242, 248.

[3] *Ibid.*, 242, 248.

dangerous act of interference took up two whole sessions of the assembly; and when at length the court, under protest, consented to proceed to business, after a day of solemn humiliation and prayer,[1] another controversy was at hand. By royal order Hutchinson had reluctantly removed from the castle the garrison in the pay of the province and placed the fort in charge of the regular troops.[2] The house bitterly complained of this action, saying that "false representations" must have been made to the king, "to induce him to pass an order, which implies a total want of confidence, and carries in it the evident marks of his royal displeasure"; and alleging that the authority vested in the governor by the charter must thus be "superseded by instruction." For "if the custody and government of that fortress" are now "lodged with the military power, independent of the supreme civil magistrate . . . , it is so essential an alteration of the constitution, as must justly alarm a free people."[3] In secret session of the council Hutchinson disclosed his instructions. Feeling that he was executing an unwise and probably illegal order, he went to the castle, discharged the garrison without warning, and then retired to his country-house at Milton.[4] The same royal order made the harbor at

[1] Hildreth, *United States*, II., 560.
[2] Hutchinson, *Hist. of Mass. Bay.*, III., 307 et seq.
[3] Bradford, *Mass. State Papers*, 258.
[4] Bancroft, *United States* (ed. of 1885), III., 389.

Boston the rendezvous of the king's ships in American waters.

In April, 1771, Hutchinson announced his appointment as governor; and in the following July, under another royal order, he gave rise to a new controversy by vetoing a bill providing for the annual income-tax, which, according to custom, included the salaries of the crown officers. For this the house rebuked him, saying that withholding his assent from the bill, "merely by force of instruction, is effectually vacating the charter, and giving instructions the force of laws, within this province." [1] The popular resentment was still further provoked by Hutchinson's announcement on June 13, 1772, that henceforth his salary would be paid by the crown. The house declared this to be an "infraction upon the charter in a material point," whereby a most important trust was wrested out of its hands; and it refused to provide for the repair of the province house while occupied by a governor not drawing his whole support from the general assembly.[2] Following close upon this, in August, came the news that in the same way the judges were to be made dependent on the royal favor.[3] The effect of this measure in advancing party organization will presently be considered.

While these events were taking place in Massa-

[1] Bradford, *Mass. State Papers*, 295, 306.
[2] *Ibid.*, 324–331.
[3] Hutchinson, *Hist. of Mass. Bay.*, III., 361.

chusetts the other provinces were harassed by similar orders from the ministry, issued "under the king's sign manual, with the privy seal annexed." Each province received a set of instructions according to local circumstances, so that a general issue upon them could not be made.[1] They dealt with a variety of subjects. Sometimes the assemblies were arbitrarily dismissed. In Georgia the governor vetoed the choice of Dr. Jones as speaker because he was "a very strong Liberty Boy." The house pronounced the veto a breach of privilege and a violation of the liberties of the people.[2] Thereupon Hillsborough ordered the governor to veto the choice of the next speaker, and to dissolve the assembly in case the right to do so were questioned. This command was obeyed to the letter.[3]

South Carolina in 1769—constrained by the demands of the settlers of the "up country," who were "clamorous for courts upon any terms"—had reluctantly provided perpetual salaries for the judges, although these would be appointed during the king's pleasure.[4] Thereafter Rawlins Lowndes and other judges from the colony were dismissed, and in 1772 persons from Great Britain were sent out to take their place. Since March, 1771, there had been no legislation, because the assembly resented

[1] Frothingham, *Rise of the Republic*, 252.
[2] Jones, *Georgia*, II., 117–119; Stevens, *Georgia*, II., 71.
[3] Jones, *Georgia*, II., 122–124.
[4] McCrady, *South Carolina*, 1719–1796, 623–643.

the action of the governor, who, under a royal instruction, refused his assent to bills appropriating money for the "Supporters of the Bill of Rights," an English "association to raise means to pay the debts of John Wilkes and to provide for his support and his expenses while imprisoned."[1] Moreover, in 1772, the governor, Lord Charles Montagu, stirred up another quarrel with the assembly by convening it at Beaufort, seventy-five miles from Charleston, the usual place of sitting.[2]

The indignation of the people of Virginia was aroused by a much more serious grievance. In 1770 the king, in the interest of British merchants, issued an instruction commanding the governor "upon pain of the highest displeasure, to assent to no law by which the importation of slaves should be in any respect prohibited or obstructed." In the address against this order, the burgesses in 1772 declared that "the importation of slaves into the colonies from the coast of Africa hath long been considered as a trade of great inhumanity, and under its present encouragement, we have too much reason to fear will endanger the very existence of your Majesty's American dominions. We are sensible that some of your Majesty's subjects in Great Britain may reap emoluments from this sort of

[1] McCrady, *South Carolina*, 1719–1776, 662–664, 683–692; Smith, *South Carolina*, 170, 369–386.

[2] McCrady, *South Carolina*, 1719–1776, 693–699; Smith, *South Carolina*, 380 et seq.

traffic; but when we consider that it greatly retards the settlement of the colonies with more useful inhabitants, and may in time have the most destructive influence, we presume to hope that the interest of a few will be disregarded, when placed in competition with the security and happiness of such numbers of your Majesty's dutiful and loyal subjects. . . . Deeply impressed with these sentiments, we most humbly beseech your Majesty to remove all those restraints on your . . . governors of this colony, which inhibit their assenting to such laws as might check so very pernicious a commerce."[1] Yet at the very time when George III. was thus fostering the slave-trade in America, Chief-Justice Mansfield rendered the famous decision which in effect declares a slave free the instant he sets foot on the soil of England.

An unwise assertion of prerogative in Maryland was producing similar effects. By proclamation in 1770 the governor revived a law regulating fees of officers "which had expired by limitation, in this way asserting the right to levy taxes."[2] The controversy thus aroused, dividing the colony into two parties, was kept up until the Revolution.

In Rhode Island the execution of the revenue laws led to a serious act of violence. Lieutenant Duding-

[1] *Miscellaneous Papers*, in Va. Hist. Soc., *Collections*, new series, VI., 14.

[2] Frothingham, *Rise of the Republic*, 253; Scharf, *Maryland*, II., 124 et seq.

ston, commander of the *Gaspee*, a schooner carrying eight guns, had given offence by his arbitrary and unlawful methods. "He stopped all vessels, including small market boats, without showing his authority for so doing; and even sent the property he had illegally seized to Boston for trial, contrary to an act of Parliament, which required such trials to be held in the colonies where the seizures were made."[1] Moreover, he is said to have searched for smuggled goods with needless violence; and in general he made himself "extremely obnoxious to the colony, in which smuggling was one of the most flourishing and most popular trades."[2]

On complaint of inhabitants of Providence, Chief-Justice Hopkins held "that no commander of any vessel has a right to use any authority in the body of the colony, without previously applying to the Governor, and showing his warrant for so doing; and also being sworn to a due exercise of his office."[3] Dudingston appealed to the admiral, who fully sustained his course. June 9, 1772, lured into shallow water by a boat which it was chasing, the *Gaspee* ran aground. In the evening the ship was boarded by an armed party from Providence. Dudingston was shot and fell on deck seriously wounded, the crew were bound and placed on shore, and the ship burned to the water's edge. The manner in which

[1] Bartlett, in *R. I. Col. Records*, VII., 60.
[2] Lecky, *England*, III., 405.
[3] *R. I. Col. Records*, VII., 60.

this outrage was dealt with by the ministry soon gave the colonists new cause for complaint.[1]

The rule of the colonies by royal orders was thus generally resented as unconstitutional. "The ministry," it was said, "have substituted discretion for law."[2] For two years this policy had caused irritation and strife. It was now about to prepare the way for the united resistance of America to Great Britain by affording the immediate motive for a revolutionary party organization.

In Massachusetts Samuel Adams had already become the centre of political agitation. He possessed precisely the qualities which belong to a consummate revolutionary leader. The very narrowness of view which often prevented him from seeing the merits of his adversaries only added to this power. He had unbounded faith in democratic self-government. To us he is perhaps best known as the "man of the town-meeting." He reverenced the people and was almost fanatical in his zeal for constitutional liberty. He had indomitable will, great tenacity of purpose, and unflinching courage. His integrity cannot justly be impeached. In his religious prejudices and beliefs he was a puritan of the puritans. He was poor in worldly goods, simple in manner and dress, and able to enter sympatheti-

[1] Bartlett, *Destruction of the Gaspee*, in *R. I. Col. Records*, VII., 57–192; Arnold, *Hist. of R. I.*, II., 309–320.

[2] R. H. Lee, *Arthur Lee*, I., 248; Frothingham, *Rise of the Republic*, 255.

cally into the thoughts and feelings of plain men. Much of his power lay in his ability to persuade and lead the fishermen, rope-makers, and ship-masters of Boston. Moreover, he possessed literary skill of a high order. His almost innumerable papers during the revolutionary period are compact, sometimes even elegant, in form, and many of them masterly in their grasp of the great problems with which they deal. He was decidedly the "penman of the Revolution."

In addition to his other gifts, Samuel Adams had a rare talent for practical politics. He displayed a capacity for organization sometimes lapsing into intrigue, a foresight sometimes sinking into cunning, which render him the prototype of a long line of American politicians. It is said that "he had an hereditary antipathy to the British government, for his father seems to have been ruined by the restrictions the English parliament imposed on the circulation of paper money, and a bank in which his father was largely concerned had been dissolved by act of parliament."[1] It is, indeed, likely that this incident did not tend to lessen his dislike of the British colonial policy. But to suppose that his hatred of monarchy and the English church[2] was essentially due to a feeling of personal wrong or to personal spite would show little understanding of

[1] Lecky, *England*, III., 391. See especially Davis, *Provincial Banks: Land and Silver*, in Colonial Soc. of Mass., *Publications*, III., 38–40.

[2] Cf. Brooks Adams, *Emancipation of Mass.*, 347 et seq.

Samuel Adams or of the real causes of the American Revolution.

From the first menace of the stamp tax Adams taught the necessity of union. For some time he held under consideration a scheme for party organization through committees of correspondence.[1] The instructions of the ministry requiring the judges to receive their salaries from the crown gave him opportunity to carry out his project. On October 5, 1772, in a Boston journal he wrote, "Is Life, Property, and everything dear and sacred to be submitted to the Decisions of PENSIONED judges? . . . Let Associations and Combinations be everywhere set up to consult and recover our just Rights."[2] He appealed to the town-meeting; but the other leaders were lukewarm, and his first efforts were not successful. November 2, 1772 — taking advantage of the anger caused by Hutchinson's arrogant answer to the resolution of inquiry—he moved "that a Committee of Correspondence be appointed to consist of twenty-one Persons—to state the Rights of the Colonists and of this Province in particular, as Men, as Christians, and as Subjects; to communicate and publish the same to the several Towns . . . and to the World as the sense of this Town, with the Infringements and Violations thereof that have been, or from time to time may be made."[3]

[1] Cf. Collins, *Committees of Correspondence*, in Amer. Hist. Assn., *Report*, 1901, I., 243–271. [2] Hosmer, *Samuel Adams*, 194, 195.
[3] *Boston Town Records*, 1770–1777, p. 93.

Though at first opposed by some of Adams's associates, this motion was at last unanimously adopted. November 20, the committee of correspondence submitted to a town-meeting in Faneuil Hall its report, which comprised a "State of the Rights of the Colonists," drafted by Samuel Adams; a "List of the Infringements and Violations of Those Rights," prepared by Joseph Warren; and a "Letter of Correspondence" with the other towns of the province, written by Benjamin Church. Together these papers constituted the most radical and comprehensive statement of the case of the colonists which had yet appeared.[1] The towns began at once to appoint similar committees; and during the early months of 1773 their replies were sent in. The substructure of a future national organization was thus laid. "The whole frame of it," says Hutchinson, "was calculated to strike the colonists with a sense of their just claim to independence, and to stimulate them to assert it."[2] According to Daniel Leonard, "this is the foulest, subtlest, and most venomous serpent ever issued from the egg of sedition. I saw the small seed when it was planted; it was a grain of mustard. I have watched the plant until it has become a great tree."[3]

Nevertheless, there seemed to be a lull in the storm.

[1] *Boston Town Records*, 1770–1777, pp. 94–108.

[2] Hutchinson, *Hist. of Mass. Bay.*, III., 366 et seq.

[3] Quoted from Hosmer, *Samuel Adams*, 204. Cf. Cushing, *Transition to Commonwealth Government*, 95 et seq.

Not a single committee of correspondence was at that time chosen outside of Massachusetts. Other colonies, however, were drawn into line by the arrival of a new royal order from Lord Dartmouth, successor to Hillsborough in the colonial office, creating a special commission[1] to investigate the affair of the *Gaspee*. The commission was authorized to arrest the offenders, if discovered, and send them to England for trial. No legal evidence could be secured; and so in June the commission finally adjourned without accomplishing its purpose.[2]

Already the proposal to transport Americans to England for trial had borne fruit. In Virginia, on March 12, 1773, the house of burgesses appointed a standing committee for intercolonial correspondence. Among its eleven members were Richard Bland, Dabney Carr, Patrick Henry, Richard Henry Lee, and Thomas Jefferson. In a set of resolutions the committee was directed to inform itself "particularly of the principles and authority on which was constituted a court of inquiry, said to have been lately held in Rhode Island, with powers to transport persons accused of offences committed in America to places beyond the seas to be tried"; and the speaker was instructed to send a copy of the resolutions to each of the other assemblies on the continent, with a request to appoint a similar committee of cor-

[1] *R. I. Col. Records*, VII., 108 et seq.
[2] *Ibid.*, 120 et seq.

respondence.[1] By July 8, five colonies — Rhode Island, Connecticut, New Hampshire, Massachusetts, and South Carolina—had complied with the request.

Thus in these two sets of committees, local and provincial, the foundation of American independence was laid. "The Union of the Colonies, which is now taking place," it was said in the press, "is big with the most important advantages to this continent. From this Union will result our Security from all foreign enemies. . . . The United Americans may bid Defiance to all their open as well as secret foes; therefore let it be the Study of all to make the Union of the Colonies firm and perpetual, as it will be the great Basis for Liberty and every public Blessing in America."[2]

[1] Frothingham, *Rise of the Republic*, 279–281, 284.
[2] "Sidney," in *New Hampshire Gazette*, July 2, 1773.

CHAPTER XV

THE TEA-PARTY AND THE COERCIVE ACTS (1773-1774)

IN his address to the general court, January 6, 1773, Hutchinson entered into an elaborate defence of the legislative supremacy of Parliament; alleged that the province was in a "disturbed and disordered state;" and as the cause thereof condemned the recent resolves of the towns as denying "the supreme authority of parliament," and tending "to alienate the affections of the people from their sovereign." "I know of no line," he declared, "that can be drawn between the supreme authority of parliament and the total independence of the colonies."[1] His challenge was promptly accepted, and each house presented a strong argument in defence of the American theory. The assembly urged that if there be no line between the "supreme authority of parliament and total independence of the colonies," then they must be "totally independent"; for it could not "have been the intention of the parties in the compact, that we should be reduced to a state of vassalage." But to draw

[1] Bradford, *Mass. State Papers*, 336, 340.

the line of distinction would be "an arduous undertaking, and of very great importance to all the other colonies; and therefore, could we conceive of such a line, we should be unwilling to propose it, without their consent in Congress." [1]

A few months after this controversy had thus elicited the formidable suggestion of continental union, Hutchinson had to face a storm which completely wrecked his influence in the province. One day in December, 1772, Franklin, who was now agent for Massachusetts, was assured by a gentleman that all the grievances complained of took their rise, not from the British government, but were projected, proposed, or solicited by "some of the most respectable among the Americans themselves, as necessary measures for the welfare of that country." [2] Franklin was incredulous; but a few days later, in proof of his statement, the gentleman placed in his hands a number of letters which Hutchinson, Oliver, and other crown officers, all except Charles Paxton native Americans, had written to Thomas Whately, formerly a member of Parliament and secretary to the treasury under George Grenville, but at the time of the correspondence (1768–1769), a private person having no official connection with the government.[3] Franklin gained permission to send these letters

[1] Bradfold, *Mass. State Papers*, 342–364, 368–396.
[2] Franklin, *Works* (Sparks's ed.), IV., 410 et seq.
[3] Hutchinson, *Hist. of Mass. Bay*, III., 404, n.; *Diary and Letters*, I., 82.

to Massachusetts, to be inspected by a few of the leading men, under a pledge that they should neither be copied nor printed. The pledge was disregarded by the recipients, and, after being privately circulated for several months, the letters were published under the pretext that Hutchinson by implication had given his consent.[1]

The fiercest indignation of the patriotic party was excited. Hutchinson was put in a hard position. He was able and upright, a thorough loyalist, and had openly opposed the course taken by the revolutionary leaders. But though honestly meant, and very moderate in tone, the letters contained some statements that he did not intend should be made public. He had not directly attacked the charter of Massachusetts, nor recommended the use of military force; but he had declared that "there must be an abridgment of what are called English liberties"; for he doubted "whether it is possible to project a system of government in which a colony, three thousand miles distant from the parent state, shall enjoy all the liberty of the parent state."[2] This passage raised a storm of criticism. Oliver had gone much further than Hutchinson, suggesting that a colonial aristocracy might be formed from the council, and hinting that some of

[1] See the message of June 9, 1773, in Bradford, *Mass. State Papers*, 404. Cf. Bancroft, *United States* (ed. of 1885), III., 441; Lecky, *England*, III., 414.

[2] *Letters Sent to Great Britain, by his Excellency Thomas Hutchinson*, etc. (Boston, 1773), 16.

the "original incendiaries" might be summarily dealt with; while Paxton, one of the commissioners of customs, made a plain demand for "two or three regiments."[1] Under the circumstances, it was inevitable that the writers should be denounced as traitors to their country.

To render a just judgment in this delicate "case of conscience" is by no means easy. Franklin had taken advantage of stolen private correspondence. He might urge as a palliative, but merely as a palliative, that, so far as the British government was concerned, the sanctity of the mails was a "transparent fiction." Franklin's own letters had been tampered with. The records of the times contain ample proof that the sacredness of confidential correspondence was constantly ignored by public officials. "The confidential clerks of the Postmaster-General were sometimes engaged twelve hours on a stretch in rifling private letters. The King, to judge by the endorsements in his own hand, —which marked the hour and minute when he received each packet of intercepted documents, and the hour and minute when he returned it to the Office,—must have passed a great deal of his time in reading them."[2] On the other hand, it might plausibly be contended that the letters of Hutchinson and Oliver were *quasi* public papers. They were

[1] *Letters sent to Great Britain, by his Excellency Thomas Hutchinson*, etc. (Boston, 1773), 28–33, 37. Cf. Hosmer, *Samuel Adams*, 223.

[2] Trevelyan, *American Revolution*, I., 170.

shown to Grenville and other statesmen, and may have had some influence in fostering a sentiment hostile to the colonies. Franklin and the Massachusetts leaders might well excuse the violation of the sanctity of private correspondence in the case of those whom they believed to be public enemies. "The writers, too," says Franklin, "had taken the same liberty with the letters of others," transmitting to England "those of Rosne and Auchmuty in confirmation of their own calumnies against the Americans."[1]

Indeed, a grave responsibility was assumed if Hutchinson and the other American office-holders under the crown, even in small part, had suggested the disastrous policy of the British government. This was Franklin's principal alleged reason for sending the letters. In transmitting them he wrote, "For my own part, I cannot but acknowledge, that my resentment against this country, for its arbitrary measures in governing us, conducted by the late minister, has, since my conviction by these papers that those measures were projected, advised, and called for by men of character among ourselves, and whose advice must therefore be attended with all the weight that was proper to mislead, and which could therefore scarce fail of misleading; my own resentment, I say, has by this means been exceedingly abated. *I think they must have the same effect with you.*"[2] Franklin's conduct appears

[1] Franklin, *Works* (Sparks's ed.), IV., 412.
[2] *Ibid.*, 414.

to be justified by his sense of public duty. Nevertheless, the use made of the letters in Massachusetts had a result precisely the opposite of that which he anticipated. Instead of creating a better feeling towards the mother-country, the spirit of bitterness and resistance was greatly intensified. The incident undoubtedly hastened the coming of the Revolution.

In England it was not known by whom the letters were sent to America; and to this day the name of the person who gave them to Franklin has not been disclosed.[1] William Whately, brother and executor of Thomas, and a certain John Temple, who had had access to the papers, were publicly accused; and in December, 1773, a duel between them grew out of the charge. To prevent further mischief—for Whately was wounded—Franklin wrote to the *Public Advertiser*, declaring that he alone was the "person who obtained and transmitted to Boston the letters in question," whose "tendency was to incense the mother-country against her colonies, and, by the steps recommended, to widen the breach."[2]

The court party was in high spirits. The assembly of Massachusetts had petitioned[3] for the removal of Hutchinson and Oliver. January 29, 1774, the petition was heard before the committee of the privy council for plantation affairs. Wedderburn,

[1] Morse, *Franklin*, 177.
[2] Franklin, *Works* (Sparks's ed.), IV., 435.
[3] Bradford, *Mass. State Papers*, 405–409.

the solicitor-general, appeared for Hutchinson and Oliver; but the real purpose of the meeting was to convict Franklin. The courtiers were there in full force. They had been "invited, as to an entertainment, and there never was such an appearance of privy councillors on any occasion, not less than thirty-five, besides an immense crowd of other auditors."[1] Encouraged by their admiring applause, Wedderburn proceeded, in his most brilliant and virulent manner, to indict Franklin as a thief. "Having hitherto aspired after fame by his writings, he will henceforth esteem it a libel to be called a man of letters—*homo trium literarum*."[2] The committee pronounced the petition of the Massachusetts assembly "false, groundless, and scandalous, and calculated only for the seditious purpose of keeping up a spirit of clamor and discontent in the province," and held that Franklin's silence proved the charge true that he had "surreptitiously obtained the letters." Franklin was at once dismissed from his office of deputy postmaster-general;[3] and, perceiving that he could no longer be useful, he resigned his agency for Massachusetts. In the spring of 1775 he went home, and did not return to Europe until he came as the representative of an independent nation.

In Massachusetts, Samuel Adams was urging the

[1] Franklin, *Works* (Sparks's ed.), VIII., 110.
[2] I.e., "f-u-r," Latin for thief. Cf. Franklin, *Works* (Sparks's ed.), IV., 447 et seq.
[3] *Ibid.*, VIII., 113.

call of a general congress, and through the Boston committee of correspondence he was zealously stirring up hostility to the ministerial policy. He was perhaps the first American to foresee independence. Apparently he now earnestly desired it; and at this moment an act of violence speedily led on to its realization, for the Boston tea-party and its immediate results were followed by a continental congress and the appeal to arms.

The king and his ministers had committed a serious blunder in retaining the tax on tea in order to assert the parliamentary right; for the colonies determined to resist the tax in order to deny that right. Indirectly the same revenue might have been derived from America by levying in England a duty of threepence a pound; in other words, by reducing by that amount the drawback allowed the East India Company. Indeed, Hutchinson believed that if all the duties laid by Townshend in 1767 "had been paid upon exportation from England, and applied to the purpose proposed, there would not have been any opposition made to the act. It would have been a favour to the colonies. The saving upon tea would have been more than the whole paid upon the other articles. The consumer in America would have paid the duty, just as much as if it had been charged upon importation."[1]

The Townshend revenue act laid an import duty of threepence a pound on tea shipped to America,

[1] Hutchinson, *Hist. of Mass. Bay.*, III., 179.

By the supplementary statute of the same year, on such shipments was allowed a drawback of the whole import duty paid in England, amounting at the time to about twenty-four per cent. of the gross price; but on the express condition that the East India Company, in whose interest the arrangement was made, should make good any loss of revenue by reason of such drawback.[1] As a result, in 1769 tea was actually sold in Boston at ninepence a pound less than before the acts. Moreover, an earlier statute[2] allowed tea to be exported to America without paying any of the inland duties still charged in England, amounting to twenty-five per cent. of the gross price. Therefore, according to Hutchinson, the accuracy of whose statement is sustained by recent research, tea "was cheaper than it had ever been sold by the illicit traders; and the poor people in America drank the same tea in quality, at three shillings the pound, which the people in England drank at six shillings."[3]

The business of the company did not prosper as well as expected. During the first four years the sales nearly doubled; but to make up the loss of revenue the company was obliged to pay over £115,000. A further concession was therefore sought; and in 1772, on exportation to America, a

[1] 7 George III., chap. lvi.; MacDonald, *Select Charters*, 237–330.

[2] 21 George II., chap. xiv.

[3] Hutchinson, *Hist. of Mass. Bay*, III., 351; Farrand, "The Taxation of Tea, 1767–1773," in *Am. Hist. Review*, III., 267.

rebate of three-fifths of the import duty was granted; while the company was no longer required to make up the loss of revenue.[1] But the non-importation agreements now stood in the way: the colonists would not drink the taxed tea at any price. In 1773 "about seventeen million pounds of tea lay unsold in the warehouses" of the company. It had to face impending bankruptcy; and the government must lose its annual payment of £400,000.

Again Parliament came to the company's aid. The whole of the import duty was now remitted on exportation to America.[2] At the same time, by obtaining a license from the treasury, the company was permitted to send the tea directly from its warehouses to its own agents or consignees in America. The middleman's profit would thus be saved. For hitherto it had been necessary to ship the tea to England and to sell it at public auction to the merchants, who then exported it to the colonies. Under the new concession the company could have afforded to sell the tea, not merely at ninepence a pound less than in England, but at a small "fraction of the price" obtained there.[3]

However, against the advice of Trecothick for the company, the tax of threepence a pound was still exacted; and this effort to force the tea on the

[1] 12 George III., chap. lx.; Macpherson, *Commerce with India*, 194, 416; Farrand, in *Am. Hist. Review*, III., 269.
[2] 13 George III., chap. xliv.; Lecky, *England*, III., 419.
[3] Farrand, in *Am. Hist. Review*, III., 269.

colonists was largely due to the king. It is "to no purpose making objections," said Lord North, "for the king would have it so. The king meant to try the question with America."[1] He seems to have fancied that the Americans would take the bait and forget the principle. If so he was soon undeceived. The company selected its agents, among whom were the two sons of Hutchinson, and in the autumn of 1773 sent a number of ships laden with tea to Boston, New York, Philadelphia, and Charleston. The people were determined to prevent the landing of the tea, and, by persuasion or menace, to cause the agents to resign their commissions. In Charleston a cargo of two hundred and fifty-seven chests arrived December 2. The agents resigned; and after the twentieth day, the duty being unpaid, the tea was seized by the collector and stored in vaults under the exchange.[2] A meeting of the inhabitants of Philadelphia resolved that the duty on tea was illegal, and that every person who "countenanced the unloading, vending, or receiving the tea, was an enemy to his country."[3] In both Philadelphia and New York the consignees were induced to resign, and the tea was sent back to London.

More serious events were taking place in Boston, where, under authority of the town-meeting, or-

[1] Bancroft, *United States* (ed. of 1885), III., 439; Almon, *Anecdotes of Pitt*, II., 242.
[2] McCrady, *South Carolina*, 1719–1776, p. 727.
[3] Frothingham, *Rise of the Republic*, 302.

ganized resistance was guided by Samuel Adams and the Boston committee of correspondence, with which the committees of four or five neighboring places sometimes sat in Faneuil Hall as a sort of representative senate. An immense mass-meeting of the inhabitants of six towns, held in the Old South Church, resolved that "at all events" the tea should be sent back without payment of duty. When the sheriff of Suffolk read the governor's proclamation warning the people "unlawfully assembled, forthwith to disperse, and to surcease all further unlawful proceedings, at their utmost peril," he was greeted with insults and derision. The agents refused to resign their commissions, and took shelter in the castle. Neither clearance papers from the collector nor a pass from the governor could be obtained by the owners to allow them to carry their cargoes back to the Thames. A popular guard was placed over the tea ships to prevent the tea from being landed; and the meetings of various towns in the province promised aid to Boston, even at the hazard of life and property.

Finally, on the evening of December 16, 1773, the last day before the tea, for non-payment of duty, might be legally seized by the collector and stored at the castle—a party of fifty or sixty men, dressed as Mohawk Indians, and directed by Adams, boarded the three tea ships at Griffin's wharf, broke open the three hundred and forty-two chests of tea, and cast their contents into the bay. Clearly the people were

in a dangerous temper; for this lawless destruction of private property was suffered to take place unhindered by the provincial council or the town authorities, and the offenders were never in any way called to account. This riot in Boston was due mainly to the sombre fanaticism which sometimes clouded the judgment of Samuel Adams; and the incident cannot justly be looked upon as an honor to his memory.[1]

There were not wanting other indications of an impending crisis, which only the highest wisdom could avert. "The inhabitants, in many parts of the province," says Hutchinson, "were learning the use of fire-arms, but not under the officers of the regiment to which they belonged. They were forming themselves into companies for military exercise, under officers of their own choosing; hinting the occasion there might soon be for employing their arms in defence of their liberties." [2] Throughout the country the exultation over the course taken by Boston was very ominous: party organization was rapidly developed; the assemblies which had not yet responded to the Virginia call now appointed intercolonial committees of correspondence; and local committees, hitherto confined to Massachusetts, began to be formed in other provinces.[3] Meantime, in February, 1774, the Massachusetts house, by a

[1] Contemporary account in Hart, *Contemporaries*, II., No. 152.
[2] Hutchinson, *Hist. of Mass. Bay*. III., 455.
[3] Frothingham, *Rise of the Republic*, 311–313.

vote of 92 out of 100 members, had impeached Chief-Justice Oliver of a high crime and misdemeanor for accepting his salary from the crown. On March 30, before the impeachment was tried, Hutchinson prorogued the general court, and a few days later dissolved it. He was not destined to meet it again, for after he was superseded by Gage[1] he left for England (June 1), and never thereafter saw his native land.

Parliament had to face a serious crisis when it met, March 7, 1774. The ministers placed before the two houses messages from the king, urging their consideration of American affairs. Wise policy seemed to require that one of three courses should be taken: the colonies might be conciliated by withdrawal of the obnoxious measures; or the laws should be firmly but justly enforced; or they might be allowed peacefully to separate. Josiah Tucker, dean of Gloucester, anticipating in part the thought of Turgot regarding the destiny of colonies, advised a peaceful separation. He was no friend of the Americans; but he believed that the empire would be stronger and its economic interests better served if they were suffered quietly to set up for themselves.[2] Burke and Chatham would not hear of a dissolution of the empire. "If I could once persuade myself," said Chatham, that the Americans "entertain the most distant intention of throwing off the legislative

[1] Hutchinson, *Hist. of Mass. Bay*, III., 459.
[2] Stephens, *Turgot*, 322–323; Tucker, *Political Tracts*.

supremacy and great constitutional superintending power and control of the British legislature, I should myself be the very first person . . . to enforce that power by every exertion this country is capable of making." [1] But Chatham, like Burke, would have saved the union by conciliation.

On the other hand, the king was bent on making an example of Massachusetts. He was utterly unable to see that there was imminent danger of continental resistance. General Gage, recently returned from America, assured him that "four regiments stationed in Boston would prevent any disturbance." "They will be lions while we are lambs," he said; "but if we take the resolute part they will prove very meek." [2] Moreover, in England a feeling of anger was aroused by the recent acts of violence in America. Therefore, an irreparable blunder was committed. Instead of adopting one of the three courses which wisdom pointed out, the ministry proposed invalid statutes as a punishment for the unlawful conduct of the colonists.

Five measures, known in England as the "repressive" and in America as the "intolerable" acts, were speedily carried through Parliament. The first of these closed the port of Boston to commerce from the first day of the following June until such

[1] Thackeray, *Chatham*, II., 274; Cobbett-Hansard, *Parl. Hist.*, XVIII., 203, 204.

[2] Frothingham, *Rise of the Republic*, 318; Donne, *Correspondence of George III.*, I., 164.

time as the king by proclamation or order of council shall see fit to open it.[1] This he may do when satisfied that "peace and obedience to the laws" have been restored and the tea paid for; and the governor shall have certified that the revenue officers have been indemnified for what they suffered in the accompanying "riots and insurrections." Even coasting vessels carrying food and fuel "for the necessary use and sustenance of the inhabitants of the said town of Boston" were forbidden to deliver their cargoes without a pass, "after having been duly searched" by the custom-house officers "at Marblehead, in the port of Salem." The English ships of war were required to maintain the blockade.

Another statute, known as the "regulating act," remodelled the constitution of Massachusetts. The practical annulment of a royal charter by the legislature was an anomaly in English jurisprudence. By this act the members of the council, or upper house, hitherto annually chosen by the general assembly, were to be appointed, as in the royal provinces, by the king under his sign-manual, and to hold office during his pleasure. After July 1 the attorney-general, inferior judges, justices of the peace, sheriffs, and all other court officers were to be appointed and removed by the governor. Even the consent of the council was not required except for removal of a sheriff. In the same way

[1] 14 George III., chap. xix. (March 31, 1774).

the chief justice and superior judges were to be nominated; but these were to hold office during the king's pleasure and to be removed only at his command. This drastic law did not stop here. Henceforth, except for elections, no town-meeting might be called without the governor's written consent; and in no case might a town-meeting transact any business not expressed in the governor's leave. Furthermore, grand and petty jurors, hitherto elected by the people in the various towns, henceforth were to be "summoned and returned by the sheriffs of the respective counties." Thus at one stroke the free institutions which had flourished for nearly a century and a half were abrogated and a centralized system put in their place. The members of the assembly might still be chosen by the people; and this was almost the only democratic feature of the constitution left untouched.[1]

On its face, the third act was designed to secure a fair trial to crown officers or magistrates accused of murder or other capital offences. When the governor was satisfied that "an indifferent trial cannot be had within the said province," he might send persons indicted for such crimes (with the witnesses), if committed while engaged in suppressing riots or enforcing the revenue laws, to some other colony or to Great Britain to be tried.[2]

These three statutes constituted the coercive

[1] 14 George III., chap. xlv. (May 20, 1774).
[2] 14 George III., chap. xxxix. (May 20, 1774).

system. To aid in their enforcement, a fourth act legalized the quartering of troops upon the inhabitants.[1] With it as a fifth "intolerable" law is usually classed the so-called "Quebec act." By this statute[2] a civil government was provided for the domain ceded by France in 1763. The province of Quebec, or Canada, was extended so as to embrace the vast region of the future Northwest Territory. In effect the Roman Catholic religion, that of the great majority of the inhabitants, was established. The English criminal law, with trial by jury, was sanctioned; but in all civil suits the old French law, without jury trial, was retained. A highly centralized system of administration — in spirit not unlike that of the French régime — was set up. Except for local purposes, the power of taxation was reserved by Parliament. All other legislative authority subject to the royal veto was vested in a council appointed by the crown.

The Quebec act was regarded at the time as one of the most serious grievances of the colonies. It was denounced as a sop to the Canadian people, intended to detach them from the common American cause, and as an object-lesson in despotic government such as would satisfy the rulers of Great Britain. The Declaration of Independence characterized it as an act "for abolishing the free system of English Laws in a neighboring Prov-

[1] 14 George III., chap. liv. (June 2, 1774).
[2] 14 George III., chap. lxxxiii.

ince, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies."

Considering the measures which preceded and accompanied this statute, it is, indeed, not surprising that the people looked upon the Quebec act with suspicion; that they believed it concealed some sinister or vindictive motive of the ministry. Yet, as a matter of fact, its purpose was entirely misunderstood. Of all the grievances of the times this one was the least substantial. Careful research[1] has clearly demonstrated that the Quebec act was the result of a policy which had slowly been evolved without regard to the troubles in the other colonies. It expressed the honest efforts of British statesmen to solve the difficult problem of governing the dominion taken from France in 1763. In the first place, none of the colonies, least of all Virginia, had a good claim to the western lands included within the boundary of the new province. So far from being designed to abolish "the free system of English laws" in Canada, we now know that the English law had never there been regularly put in force, as evidently intended that it should be by the royal proclamation of 1763. Moreover, as early as 1768 the ministry had become convinced that it would be wise to continue the French civil law in

[1] Coffin, *Province of Quebec and Early American Revolution*, 39 et seq.

that province. An investigation by the crown lawyers was then ordered, and eventually upon their reports the Quebec act was based.

The facts are much the same regarding the withholding of representative institutions in Canada. There was no design to establish arbitrary government there or to attack the liberties of the other colonies. Already in 1765 the question of granting an assembly was being earnestly considered. In 1772, Solicitor-General Wedderburn reported that the establishment of such an assembly was inexpedient because of the "peculiar difficulties presented by the religion of the great mass of the inhabitants." The debates on the Quebec act clearly disclose the real motives for withholding representation. It was felt (1) that "it would be unjust to exclude the French Roman Catholic majority, and (2) that it would be unsafe to admit it. Attorney-General Thurlow asserted without contradiction that no one had claimed that it was at present fit to give an assembly to Canada; and Fox admitted that he would not explicitly state that such a step was then expedient."[1]

Regarding the motive for extending the boundaries of Quebec to the Ohio and Mississippi, the Declaration of Independence seems equally at fault. According to Coffin, this step was taken, "not through invidious designs against the other colonies, but mainly, if not entirely, from considerations

[1] Coffin, in Am. Hist. Assoc., *Report*, 1894, p. 276.

connected solely with the Indians and the fur-trade. . . . It can clearly be established that the steadily increasing anarchical character of the conditions in these regions had by 1774 convinced the authorities that they should be annexed to some one civil government," and almost of necessity the province selected was Canada.[1] Furthermore, the same writer has shown that the Canadians were by no means highly gratified by the provisions of the Quebec act continuing the old French civil law and virtually establishing the Roman church. On the contrary, partly through ignorance of its real purpose, it tended to alienate them from the British government. They dreaded a restoration of oppressive feudal burdens and compulsory tithes; for the abuses of the old régime had extended even to the New World. In fact, the act, however well meant, proved ill-timed and disastrous. It increased the discontent of the English colonists, and it created a race-antagonism in Canada which was destined to bear evil fruit in after days.[2]

[1] Coffin, in Am. Hist. Assoc., *Report*, 1894, pp. 278, 279; Coffin, *Province of Quebec and Early American Revolution*, 398–432.

[2] Coffin, *Province of Quebec*, 488 et seq., 540 et seq.

CHAPTER XVI

THE FIRST CONTINENTAL CONGRESS

(1774)

THE coercive acts were carried through Parliament by immense majorities.[1] Even friends of America, like Barré and Conway, voted for the Boston port bill. On the government side the most violent counsels were given. According to Charles Van, the "offense in the Americans" was "flagitious"; the "town of Boston ought to be knocked about their ears, and destroyed. . . . You will never meet with that proper obedience to the laws of this country, until you have destroyed that nest of locusts."[2] Lord George Germain favored the regulating act in the interest of class-privilege. "Put an end to their town-meetings," he cried. "I would not have men of a mercantile cast every day collecting themselves together and debating about political matters; I would have them follow their occupations as merchants, and not consider themselves as ministers of that country."[3]

[1] For the debates, see Cobbett-Hansard, *Parl. Hist.*, XVII., 1163 et seq.; Force, *American Archives*, 4th series, I., 6–61, 66–104, 111–129, 165–216; *Annual Register*, 1774.

[2] Cobbett-Hansard, *Parl. Hist.*, XVII., 1178.

[3] *Ibid.*, 1195.

But the coercive measures were not adopted without solemn warnings from an enlightened opposition. The port bill, said Rose Fuller, cannot be carried "into execution without a military force." In reply, Lord North said he "should not hesitate a moment" to use military force to compel "due obedience to the laws of this country." The bill for transporting persons for trial called out a protest in the Lords. Chatham, who had now returned to his place in that body and was taking deep interest in American affairs, spoke with his old-time power against the bill for quartering troops on the colonists.[1]

Burke agreed with Franklin,[2] that it would be wise to go back to the state of things before the Grenville policy was tried. In supporting a motion for the repeal of the tea act he delivered his famous speech on taxation. "Revert to your old principles," he advised; leave "America, if she has taxable matter in her, to tax herself. I am not here going into a distinction of rights, nor attempting to mark their boundaries. I do not enter into these metaphysical distinctions. I hate the very sound of them. Leave the Americans as they anciently stood, and these distinctions, born of our unhappy contest, will die along with it. . . . Be content to bind America by laws of trade; you have always done it. Let this be your reason for binding their trade. Do not

[1] Cobbett-Hansard, *Parl. Hist.*, XVII., 1170, 1172, 1320–1325; Rogers, *Protests of the Lords*, II., 146–148.

[2] Franklin, *Works* (Sparks's ed.), IV., 432.

burthen them with taxes; you were not used to do so from the beginning. Let this be your reason for not taxing. These are the arguments of states and kingdoms. Leave the rest to the schools; for there only they may be discussed with safety."[1]

The advice of Burke came too late. The die was cast, and the king was "infinitely pleased."[2] The first response of America to the port bill left small doubt as to the consequences of his folly.[3] A copy of the act reached Boston on May 10. Two days later a meeting of the committee of correspondence with the committees of eight other towns addressed the committees in all the provinces, recommending a suspension of trade with Great Britain, and "suggesting that the single question was whether the other colonies would consider Boston as suffering for the common cause, and resent the injury inflicted on her."[4] The next day a letter was sent out by the town-meeting making the same suggestion of commercial non-intercourse in these words: "Voted, Nem. Con. that it is the opinion of this Town, that if the other Colonies come into a joint resolution, to stop all importations from Great Britain & Exportations to Great Britain, and every part of the West Indies, till the Act for Blocking up

[1] Cobbett-Hansard, *Parl. Hist.*, XVII., 1264, 1265.
[2] Donne, *Correspondence of George III.*, I., 178, 181, 182, 183.
[3] Cushing, *Transition to Commonwealth*, 54 et seq.
[4] Frothingham, *Rise of the Republic*, 321, 322.

EXPLANATION:

By Legislature (unicameral in Pennsylvania).

By Lower (Popular) House of Legislature.

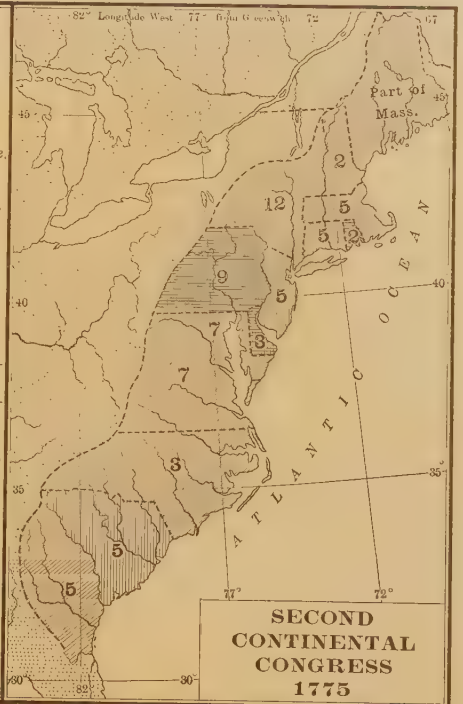
By Provincial Congress or Convention of Town or County Deputies.

By Irregular Members.

1774-New York: By City and County Delegates.
Connecticut: By Committee of Correspondence, under direction of House of Representatives.
South Carolina: By mass meeting, with Delegates approved by House of Representatives.

Unrepresented.

Figures indicate number of delegates.



DESIGNATION OF MEMBERS TO GENERAL CONGRESSES 1774 - 1775

this Harbor be repealed, the same will prove the Salvation of North America & her Liberties."[1]

On the very same day General Gage, coming to supersede Hutchinson as governor, entered the harbor, bringing with him, or soon followed by, four more regiments. Promptly on June 1 the blockade of the port was put in force by a cordon of British ships, and the official records were removed to Salem, which a royal order had made the seat of government.[2] A few days later troops and artillery were landed unmolested, and from this time forward Boston was virtually in the hands of a hostile army. "Cannon were planted on its eminences and at the single outlet into the country; troops daily paraded the streets, and the place wore the aspect of a garrison."[3]

Starvation threatened the town, for directly or indirectly its people were mainly dependent upon commerce for a living. Food and fuel soon became scarce and dear; work was hard to find; the ship-yards and rope-walks were idle; house-building stopped for want of materials. A committee of the town-meeting adopted various expedients for giving employment to the poor: a brick-yard was opened on the neck; streets were repaved; and "wool, flax, and cotton were bought to give labor to poor women"; leather "was furnished to the shoemakers and iron

[1] *Boston Town Records, 1770–1777*, 174.
[2] Force, *American Archives*, 4th series, I., 245, 331.
[3] Frothingham, *Rise of the Republic*, 325.

to the blacksmiths, and their finished work taken in payment."[1] The appeal for aid found a generous response.[2] Windham, Connecticut, sent a flock of sheep; Marblehead granted free use of her harbor, wharves, and warehouses; a gift of rice came from South Carolina. Money was contributed by various cities, including New York, London, and even Montreal. The Quakers of Pennsylvania sent £2540. A subscription-list in Fairfax County, Virginia, was headed by George Washington, who gave £50.[3]

Thus the port bill and the other coercive acts as they were successively announced drew the colonists together in neighborly sympathy. At the same time they served as a powerful revolutionary agent; for the discussion of the Boston proposal of commercial non-intercourse as a means of retaliation speedily led to a continental union. The formation of committees of correspondence went on swiftly, and from various quarters came the demand for a congress. In New York and Philadelphia the policy of suspending trade with Great Britain without general consultation was not received with favor; and in each of these cities a committee of the people recommended the appointment of delegates to a general congress.[4] The Quakers shrank from

[1] *Boston Town Records, 1770–1777*, 175 et seq.; Sparks, *Men Who Made the Nation*, 75.

[2] Mass. Hist. Soc., *Collections*, 4th series, IV., 1–278.

[3] Frothingham, *Rise of the Republic*, 326.

[4] Force, *American Archives*, 4th series, I., 295 et seq., 332, 341–347.

any course which might provoke an appeal to arms; while in both New York and Pennsylvania there was already evidence of the existence of a powerful loyalist party.

Virginia was first to take definite action. May 24, 1774, the house of burgesses, in resolutions drafted by Jefferson, set aside June 1—when the port bill went into effect—"as a day of fasting, humiliation, and prayer; devoutly to implore the Divine interposition, for averting the heavy calamity which threatens destruction to our civil rights, and the evils of civil war; to give us one heart and one mind firmly to oppose, by all just and proper means, every injury to American rights; and that the minds of his Majesty and his Parliament may be inspired from above with wisdom, moderation, and justice, to remove from the loyal people of America all cause of danger, from a continued pursuit of measures pregnant with their ruin."[1]

Two days later, inasmuch as this paper reflected "highly upon his majesty and the parliament of Great Britain," Dunmore dissolved the house. At the Raleigh tavern, May 27, the burgesses, no longer acting as an official legislative body, adopted a resolution recommending an annual congress of all the colonies, "to deliberate on those general measures which the united interests of America may from time to time require." This was sent to the other assemblies asking their concurrence; and a con-

[1] Force, *American Archives*, 4th series, I., 350.

vention of delegates from the several counties of the province was called to meet at Williamsburg on the first day of the following August.[1]

The first response came from Rhode Island, where delegates were chosen June 15. At Salem, two days later, the Massachusetts house elected five delegates to a continental congress to be held in Philadelphia on the first day of September. With the designation of the time and place for the meeting the call for the congress was now complete. During the next two months—while the people were intensely excited by the passage of the regulating act and the proceedings of Gage in putting it in force—similar action was taken by ten other colonies.

The delegates were selected in various ways.[2] In Pennsylvania and Rhode Island they were chosen by the legislature; in Massachusetts by the lower house. Sometimes they were appointed in conventions or provincial congresses of town or county delegates called for the purpose, as in New Hampshire, Maryland, New Jersey, Delaware, Virginia, and North Carolina. In Connecticut they were chosen by the committee of correspondence under the authority of the assembly; in South Carolina by a public meeting of inhabitants of the province held in Charleston, whose action the assembly ratified. New York, where party antagonism was growing bitter, was irregularly and im-

[1] Force, *Am. Archives*, 4th series, I., 350, 351, 416; Campbell, *Virginia*, 573. [2] *Journals of Congress*, I., 2 et seq.

perfectly represented. In seven wards of the city five delegates were elected "by duly certified polls, taken by proper persons." These same deputies were approved by the districts in Westchester and Dutchess and by the city and county of Albany. Separate delegates were sent by Suffolk, Orange, and Kings. The rest of the province was unrepresented.[1]

This body, later called the First Continental Congress, began its work in Carpenters' Hall, Philadelphia, September 5, 1774. It was composed, when complete, of fifty-five members from twelve colonies. Among them were many of the ablest men of the country: Stephen Hopkins from Rhode Island; Roger Sherman and Silas Deane from Connecticut; John Adams and Samuel Adams from Massachusetts; James Duane and John Jay from New York; Joseph Galloway, John Dickinson, and Thomas Miflin from Pennsylvania; Cæsar Rodney, George Read, and Thomas McKean from Delaware; Henry Middleton, Christopher Gadsden, and the two Rutledges from South Carolina; and from Virginia an illustrious group comprising Peyton Randolph, Richard Bland, Benjamin Harrison, Edmund Pendleton, Richard Henry Lee, Patrick Henry, and George Washington. One, Stephen Hopkins, had taken part in the Albany convention just twenty years before; eight were in the Stamp-Act Congress;[2] but very few of the others had

[1] *Journals of Congress*, I., 4, 9, 15.
[2] Frothingham, *Rise of the Republic*, 369.

ever seen one another before coming to Philadelphia.

Not the least important result of the congress was the broadening influence produced by the personal contact of its members. A rare opportunity for social intercourse was afforded. Philadelphia was the richest and most cultivated city in America. Under the genial glow of its lavish hospitality, sectional, political, and religious prejudice became softened or melted away entirely. The deputies were banqueted by the city and by the Pennsylvania assembly, and a ceaseless round of entertainments was provided for them in private houses. During his fifty-four days in Philadelphia, Washington was suffered to dine but nine times at his lodgings. John Dickinson drove into the city "day after day in his coach drawn by four white horses to take delegates out to his beautiful country home where they could dine and talk politics."[1]

In particular it is enlightening to observe how the provincialism of John Adams gradually gave way under the charm of the freer environment. Even his sturdy puritanism became somewhat toned down. October 9—probably for the first time in his life—he "went, in the afternoon, to the Romish chapel, and heard a good discourse upon the duty of parents to their children, founded in justice and charity. The scenery and the music are so calculated to take in mankind, that I wonder the

[1] Sparks, *Men Who Made the Nation*, 102.

Reformation ever succeeded." Much of his *Diary* is devoted to the breakfasts and dinners to which he was invited. "A most sinful feast again," he exclaims on September 8; "every thing which could delight the eye or allure the taste; curds and creams, jellies, sweetmeats of various sorts, twenty sorts of tarts, fools, trifles, floating islands, whipped sillabubs, . . . Parmesan cheese, punch, wine, porter, beer, &c." Yet, after seven weeks' exposure to such good cheer, he could write, "Took our departure, in a very great rain, from the happy, the peaceful, the elegant, the hospitable city of Philadelphia," the city of which he had formed anything but a flattering opinion before this visit.[1]

The congress of 1774 was not thought of by the people as a congress in the modern legislative sense. It was rather a convention of ambassadors of subordinate, but distinct communities which had found it needful to take counsel of one another regarding a crisis in their common relations to the parent state, in order, if possible, to adopt some common plan of action. It was essentially an advisory or consultative body. In another aspect it may be regarded as the completion of the revolutionary party organization of which the basis was laid in the committees of correspondence. It undertook no acts of "sovereign" authority; although through the functions which it exercised, notably the sanction of the Association, it prepared the way for the

[1] Adams, *Works*, II., 370, 395, 402.

gradual assumption of such authority by the congress of 1775. The character of the body is disclosed in the instructions or powers of its members. These instructions are very similar in substance. The assembly of Pennsylvania, to take a typical example, resolved:

"That there is an absolute necessity that a Congress of deputies from the several colonies, be held as soon as conveniently may be, to consult together upon the present unhappy state of the colonies, and to form and adopt a plan for the purpose of obtaining redress of American grievances, ascertaining American rights upon the most solid and constitutional principles, and for establishing that union and harmony between Great Britain and the colonies, which is indispensably necessary to the welfare and happiness of both."[1]

At the first session of the congress an organization was effected. Peyton Randolph was chosen president and Charles Thompson secretary. Although not a member, Thompson was a reputable merchant and leader of the "liberty men" in Philadelphia. An oath of secrecy was taken, and for seven weeks—until October 26—the deliberations were carried on behind locked doors. After a long and warm discussion it was decided that each colony, small or great, should have one vote. It was while debating this question that Patrick Henry uttered the famous words, "Fleets and armies and the present state of

[1] *Journals of Congress*, I., 5.

things show that government is dissolved. . . . The distinctions between Virginians, Pennsylvanians, New Yorkers, and New Englanders are no more. I am not a Virginian, but an American." [1]

No record of the debates was made, and just what was said during the seven weeks of discussion we shall never know. From the few incidents recorded by John Adams [2] and others we are able to judge that the proceedings of the congress were often discordant and its action far from unanimous. That a policy of resistance rather than of concession was adopted is due mainly to the ability and stern determination of the men from Virginia and Massachusetts, and especially to the political craft and organizing power of Samuel Adams. According to his antagonist, Joseph Galloway, Adams, "though by no means remarkable for brilliant abilities, yet is equal to most men in popular intrigue and the management of a faction. He eats little, drinks little, sleeps little, thinks much, and is most decisive and indefatigable in the pursuit of his objects. It was this man, who, by his superior application, managed at once the faction in Congress at Philadelphia and the factions in New England." [3] On the second day, though a strict Congregationalist, Adams moved that Mr. Duché, an Episcopalian clergyman, should open the session with prayer. "I am no bigot," he said; "I can hear a prayer from a

[1] Adams, *Works*, II., 366–368. [2] *Ibid.*, 365–402.
[3] Galloway, *Historical and Political Reflections*, 67.

man of piety and virtue, who is at the same time a friend of his country."[1] This proved to be a master-stroke of political finesse in disarming religious prejudice. Again, it was through Adams's planning that on September 17 the revolutionary resolves of the Suffolk convention were placed before congress. These declared that "no obedience is due from this Province to either or any part" of the recent acts of Parliament; advised the meeting of a provincial congress; directed the tax-collectors to pay no money into the treasury until the constitution should be restored; denounced the "mandamus" councillors who refused to resign as "obstinate and incorrigible enemies of this country"; and virtually threatened armed resistance if the obnoxious measures were enforced. The resolves were published by congress together with its own resolutions approving the course taken by Boston and the convention in resisting the parliamentary measures.[2]

The crisis in the deliberations came September 28, when congress found itself at the parting of the ways, and had to choose between compromise and revolution. Joseph Galloway, leader of the party of conciliation—of those who censured the ministerial policy but who at all hazards would oppose independence—presented a "Plan for a Proposed Union between Great Britain and the Colonies."

[1] Adams, *Works*, II., 368, 369.
[2] *Journals of Congress*, I., 9–14.

It provided for a president-general to be appointed by the crown, and a grand council composed of deputies chosen every three years by the legislatures of the several colonies and meeting at least once a year. The council was to be "an inferior and distinct branch of the British parliament." Its acts were to be subject to the veto of Parliament, while in turn it might reject the measures of Parliament relating to the colonies.[1] It was a worthy and sagacious effort to preserve the empire and to prevent the calamity of civil war. It represented, it is said, the views of Colden of New York, and Franklin of New Jersey, and it was vigorously supported by such men as James Duane and John Jay. Edward Rutledge thought it "almost a perfect plan"; and it is highly significant that it was defeated only by a majority of one in a vote of eleven colonies.[2]

The great acts of the congress are the Declaration of Rights and Grievances and the Association. By the Declaration, in compact and noble phrase, a long list of grievances recalling every phase of the unhappy controversy of ten years is set forth; and the rights claimed by the "inhabitants of the English colonies in North America, by the immutable laws of nature, the principles of the English constitution, and the several charters or compacts" are asserted. Thirteen acts of Parliament are formally enumerated as being "infringements and

[1] Galloway, *Candid Examination*, 53.
[2] Adams, *Works*, II., 387, *n.*

violations of the rights of the colonists" whose repeal was "essentially necessary in order to restore harmony" between them and Great Britain. In particular the five coercive acts are condemned as "impolitick, unjust, and cruel, as well as unconstitutional, and most dangerous and destructive of American rights."[1]

The Association was designed to put in force the suspension of trade with Great Britain which congress had already resolved upon. In behalf of themselves and the inhabitants of the colonies represented, to obtain redress of grievances the deputies solemnly declare that after December 1, 1774, they will neither import nor consume tea or any other British goods; nor will they export goods to Great Britain, Ireland, or the West Indies after September 10, 1775. Furthermore, "we will neither import nor purchase, any slave imported after the first day of December next; after which time, we will wholly discontinue the slave trade." Frugality, industry, and domestic manufactures are encouraged. To enforce the agreement, in every county, city, and town a committee is to be chosen, "whose business it shall be attentively to observe the conduct of all persons," and if any one violates the Association, forthwith to cause the truth "to be published in the gazette," to the end that the foes to the rights of British America may be "publicly

[1] *Journals of Congress*, I., 19–22; MacDonald, *Select Charters*, 356–361.

known" and "universally contemned." The committees of correspondence in the respective colonies are charged frequently to "inspect the entries of their custom-houses," and to keep each other informed regarding all matters touching the Association.[1]

In the history of the American nation the Association of 1774 holds an honorable place. It is virtually the beginning of the federal union. It is the only thing resembling at all a written constitution which the people had until the Articles of Confederation were finally ratified nearly seven years later.

Besides the two organic acts already considered, congress presented a petition to the king; an address to the people of Quebec inviting them to send delegates to the congress called for the following year, both drafted by Dickinson; an address to the people of Great Britain, of which Jay was the author; and a memorial to the people of the colonies. All these papers are marked by sobriety, dignity, and power. When laid before Parliament in 1775, Chatham declared that for "solidity of reason, force of sagacity, and wisdom of conclusion under a complication of difficult circumstances, no nation or body of men, can stand in preference to the general congress at Philadelphia."[2]

[1] *Journals of Congress*, I., 23–26; MacDonald, *Select Charters*, 362–367.

[2] *Journals of Congress*, I., 26–49; Cobbett-Hansard, *Parl. Hist.*, XVIII., 155, *n.*

CHAPTER XVII

THE APPEAL TO ARMS

(1774–1775)

WITHIN six months after the adjournment of the First Continental Congress, the Association of 1774 was ratified by all the colonies except Georgia and New York. As in the case of choosing delegates, this action was taken in conventions, provincial congresses, or regular legislative assemblies. At the same time local committees were everywhere appointed to enforce the Association.[1] Even before it was adopted the terrorism of loyalists had begun. Tarring and feathering was becoming the order of the day. The time had now come when men must choose sides. Loyalists were bitterly stigmatized as Tories and traitors, and the cause of liberty was sullied by acts of intolerance and persecution—the inevitable accompaniments of revolution.[2]

In Georgia the patriotic party was unable to gain acceptance of the Association; but it was ratified

[1] Force, *American Archives*, 4th series, I., 993, 1023, 1109, 1124, 1158; Dunmore's letter, in Hart, *Contemporaries*, II., 439.

[2] Fisher, *True Am. Revolution*, 155 et seq.

by forty-five of the deputies to the provincial congress which met at Savannah on March 18, 1775. A motion of approval was defeated in the New York assembly, but that body did not abandon the American cause. The papers adopted by it, and forwarded to Edmund Burke, its agent in England, were conceived in much the same spirit as were those of congress. The remonstrance to the commons "was found to be so emphatic in its claims of rights that the ministers opposed and prevented its reception." [1] Furthermore, in both Georgia and New York local committees of inspection were created.

The appeal to arms seemed unavoidable; yet even at this late hour the American leaders were resolved to use force, if force must be employed, not to set up independence, but to gain a redress of grievances.[2] In October, 1774, Washington wrote that independence is not "desired by any thinking man in all North America." Yet in the Virginia convention two months before he had said, "I will raise one thousand men, subsist them at my own expense, and march myself at their head for the relief of Boston." December 22 he is reported as already in command in the Northern Neck of "one thousand volunteers, as fine fellows and good woodsmen as any on our continent";[3] and

[1] Hildreth, *United States*, III., 56, 65.

[2] Opposite view in Fisher, *True Am. Revolution*, 169 et seq.

[3] Washington, *Writings* (Ford's ed.), II., 440, 444; Adams, *Works*, II., 360; Mass. Hist. Soc., *Collections*, 4th series, IV., 187; Force, *American Archives*, 4th series, I., 1145.

January 17, 1775, in his county of Fairfax, he presided at a meeting which enrolled the militia and voted a tax for the purchase of arms and to pay for the service of the men.

Twelve days later Samuel Adams declared that "one regular attempt" of the ministers to subdue a colony would "open a quarrel which will never be closed, till what some of *them* affect to apprehend, and we sincerely deprecate, will take effect."[1] In still more emphatic words — five weeks before Lexington—John Adams pronounced the assertion that the people of Massachusetts were eager for independence "as great a slander on the province as ever was committed to writing."[2]

Throughout the continent preparations were making for armed resistance to the coercive acts. Congress had given warning that the "schemes agitated against these colonies have been so conducted, as to render it prudent that you should extend your views to mournful events, and be, in all respects, prepared for every contingency."[3] The people responded by organizing military companies and supplying themselves with arms and ammunition. In Massachusetts in particular affairs were moving swiftly to a crisis. The people were resolved that government under the regulating act should not be set up. Many of the "mandamus" councillors

[1] Wells, *Samuel Adams*, II., 274.
[2] "Novanglus," in *Boston Gazette*, March 13, 1775.
[3] *Journals of Congress*, I., 38.

BRITISH POSSESSIONS
IN NORTH AMERICA, 1775
Before the Outbreak of Hostilities
SCALE OF MILES
0 50 100 200 300 400
Proclamation Line of 1763
CLAIMED BY NORTH CAROLINA
CLAIMED BY GEORGIA
SPANISH
INDIAN
SOUTH CAROLINA
GEORGIA
WEST FLORIDA
EAST FLORIDA
Cape Fear
Charleston
Beaufort
Savannah
St. Augustine
Pensacola
Mobile
Natchez
New Orleans
Natchitoches
TEXAS
GULF OF MEXICO
ATLANTIC
BAHAMA ISLANDS
TROPIC OF CANCER
CUBA
SAN DOMINGO
Arkansas R.
Red R.
Saline R.
Mississippi R.
Tennessee R.
Tombigbee R.
Alabama R.
Apalachicola R.
Savannah R.
Altamaha R.
Santee R.
Pee Dee R.
Cape Fear R.
PROCLAMATION LINE
35°
30°
25°
20°
95°
90°
85°
80°
75°
70°
Longitude West from Greenwich
BORMAY & CO., N.Y.

HUDSON BAY COMPANY
James Bay
Ft. Albany
Albany R.
Ruperts R.
Lake of the Woods
Lake Nipigon
LAKE SUPERIOR
Lake Nipissing
Sault Ste. Marie
Michillimackinac
LAKE HURON
LAKE MICHIGAN
Green Bay
Wisconsin R.
Detroit
L. ERIE
Maumee R.
Sciote R.
Muskingum R.
Wabash R.
Illinois R.
Mississippi R.
Missouri R.
Vincennes
St. Louis
Cahokia
Ohio R.
Kanawha R.
Ottawa R.
Saguenay R.
Quebec
Montreal
St. Lawrence R.
QUEBEC ACT (1774)
L. ONTARIO
Niagara
CLAIMED BY NEW YORK
SIX NATIONS
REGARDED
NO LONGER
ALSO CLAIMED BY VIRGINIA
Ft. Pitt
PENNSYLVANIA
Delaware R.
Philadelphia
NEW JERSEY
Baltimore
DEL.
MARYLAND
Potomac R.
VIRGINIA
MTS.
1763
L. Champlain
IN
Mohawk R.
NEW YORK
Hudson R.
Albany
Saugatuck
CLAIMED 1775 BY VERMONT AS NEW INDEP. STATE
CORR.
NEW HAMPSHIRE
Dover
Portsmouth
Worcester
Salem
Boston
Cambridge
MASS.
Providence
CONN.
R.I.
Newport
LONG I.
New York
MASSACHUSETTS
(MAINE)
St. John R.
NOVA SCOTIA
Bay of Fundy
Annapolis (Port Royal)
Halifax
Louisburg
C. Sable
ANTICOSTI I.
GULF OF ST. LAWRENCE
ATLANTIC OCEAN
95°
90°
85°
80°
75°
70°
65°
60°
50°
45°
40°

provided for by that act were forced to decline or to resign their commissions; courts were prevented from sitting; in Boston jurors refused to be sworn; and Chief-Justice Oliver was compelled to give up his office as president of the council.[1]

Meanwhile the popular anger was stirred by the conduct of Gage. In June he issued a proclamation which Washington condemned as "more becoming a Turkish bashaw, than an English governor."[2] It called the non-importation agreement an "unwarrantable, hostile, and traitorous combination"; its subscribers "declared and open enemies of the King, Parliament, and the Kingdom"; and enjoined "all Magistrates and other officers within the several counties in this Province, . . . to apprehend and secure for trial all and every person" who may publish or sign or invite others to sign the aforesaid "Covenant."[3] This futile menace only increased the number of those who hastened to subscribe the agreement. Alarmed at the hostile attitude of the province, Gage removed the seat of government from Salem back to Boston, and on September 1 took a step which came near precipitating a bloody conflict. By his order a body of troops seized the stock of powder belonging to the province, stored on Quarry Hill "in Charlestown bounds" near Medford, and carried it to the castle.[4] At the same

[1] Force, *American Archives*, 4th series, I., 764.
[2] Washington, *Writings* (Ford's ed.), II., 424.
[3] Force, *American Archives*, 4th series, I., 491, 492.
[4] *Essex Gazette*, September 6, 1774.

time two field pieces were brought off from Cambridge.

The news of the seizure caused great excitement. The next morning thousands of freeholders, leaving their guns in the rear, advanced to Cambridge, where they compelled several of the new councillors to resign.[1] The militia of Worcester County and the volunteers of Hampshire County started for Boston. Incensed by the additional rumor that the warships had fired on the town, killing several persons, Israel Putnam summoned the militia of Connecticut to take up arms, and thousands responded to his call. But all these companies were stopped by express riders from Boston, reporting that at present no action was to be taken.[2] Against the remonstrance of the selectmen the governor gave further offence by fortifying the Neck, the only entrance to Boston on the land side. This called forth a protest from the Suffolk County convention at Milton.[3]

The first Massachusetts assembly since the regulating act took effect had been summoned to meet at Salem, October 5, 1774; but fearing that the mandamus councillors would not be suffered to take their seats, Gage issued a proclamation countermanding the call.[4] Disregarding the proclamation, held to be irregular, many of the representatives

[1] Bancroft, *United States* (ed. of 1885), IV., 55.
[2] *Ibid.*, 56, 57.
[3] Force, *American Archives*, 4th series, I., 777. [4] *Ibid*, 809.

met at Salem at the appointed time. After waiting two days, the governor not appearing, they resolved themselves into a provincial congress, and a few days later adjourned to Concord, where John Hancock was chosen president and Benjamin Lincoln secretary.

This provincial congress, which soon removed to Cambridge, proceeded to form a military organization. A committee of safety was appointed with power to call out the militia. Other committees were raised to put the province in a state of defence and to procure military stores. Three generals were chosen; the towns were directed to provide themselves with arms and ammunition; and the militia were ordered to choose company and regimental officers and to perfect themselves in discipline; while one-fourth of their number—the "minute-men"—were to be ready to march at a moment's notice.[1]

The acts of the first provincial congress, like those of its successor, had all the force of law in the province. It was formed according to the provisions of the charter governing the choice of the house of representatives, but it sat without a council. In vain Gage denounced its proceedings as illegal. Indeed, his functions as civil governor were now practically at an end: the royal courts were suspend-

[1] *Journals of the Mass. Provincial Congress*, 7, 23, 32-35; Force, *American Archives*, 4th series, I., 829 et seq. See especially Hunt, *The Provincial Committees of Safety*, 10 et seq.

ed, the council was destroyed, and the lesser executive bodies took their direction from the provincial congress. Therefore Gage was obliged more and more to fall back on his authority as commander of the army. Thus the revolution was practically inaugurated in Massachusetts.[1]

A last opportunity was now given the British government to choose between the ways which led either to peace or civil war. The ministers did not hesitate a minute to undertake the forcible subjugation of the colonies, and in the newly elected Parliament they found themselves sustained by an overwhelming majority. The long struggle of Wilkes for constitutional right was, indeed, crowned with success, and he was allowed to take his seat in the commons unopposed. But popular sentiment, so far as an imperfect representation and a feeble press could give it expression, seemed strongly in favor of coercion. Gage had suggested that it might be well "to cut the colonies adrift, and leave them to anarchy and repentance." The idea was hateful to the king. "The New England governments are now in a state of rebellion," he said to North; "blows must decide whether they are to be subject to this country or independent."[2]

The petition of congress, with the other papers relating to America, was laid before Parliament, January 19, 1775. The next day Chatham moved

[1] Force, *American Archives*, 4th series, I., 829 et seq.
[2] Donne, *Correspondence of George III.*, I., 214.

an address to the king for "immediate orders" to remove the forces from the town of Boston as soon as practicable. At once the way must be opened for conciliation; "an hour now lost may produce years of calamity." Though his motion was supported by Shelburne and Camden, it was rejected by a vote of nearly three to one. "Nothing," said the king, "can be more calculated to bring the Americans to a due submission."[1]

Chatham's efforts to save the empire did not end here. February 1 he brought forward a scheme for reconciliation which was liberal in spirit though requiring mutual concessions: all the obnoxious acts were to be repealed; no tax for revenue was ever to be demanded "from British freemen in America" without "common consent" given in the provincial assemblies. In return, all British subjects in the colonies were required to acknowledge the "supreme legislative authority and superintending power" of Parliament. To make this acknowledgment the delegates of the Continental Congress were to assemble, and they were required to grant to the king "a certain perpetual revenue," to be placed at the disposal of Parliament. "Chatham exerted himself on this occasion with renewed and remarkable vigor; but, in spite of all his efforts, after a warm and very pointed debate, his bill was refused the courtesy of lying on the table, and contrary to the

[1] Donne, *Correspondence of George III.*, I., 225; Cobbett-Hansard, *Parl. Hist.*, XVIII., 74 et seq., 149 et seq., 160.

usual course, was rejected by a vote of two to one at the first reading."[1]

Some days later Lord North himself astonished his friends by submitting a plan for conciliation. He proposed that when any colony, through its legislature, shall make provision for contributing its "proportion to the common defence," and "shall engage to make provision also for the support of the Civil Government, and the Administration of Justice, in such Province," it "will be proper, if such proposal shall be approved" by the king and Parliament, to "forbear" laying any tax upon it except for the regulation of commerce. The measure was a mere palliative, sure to be rejected in America, and not satisfactory to the ministerial party. Nevertheless, out of deference to the prime-minister, on February 27 it was adopted by a large majority.[2]

In his heart Lord North distrusted the very policy which he represented. Already, on February 9, at his instance, both houses had presented an address to the king, declaring that rebellion existed in Massachusetts and pledging their aid in subduing it. The next day he asked leave to introduce the bill for the "New England restraining Act," saying that "as the Americans had refused to trade with this

[1] Cobbett-Hansard, *Parl. Hist.*, XVIII., 198–203 et seq.; Hildreth, *United States*, III., 61.

[2] Force, *American Archives*, 4th series, I., 1597–1622 (the debates).

Kingdom, it was but just that we should not suffer them to trade with any other nation."[1]

While this measure was pending, Edmund Burke delivered his great speech on conciliation. Instead of seeking a revenue he advised Parliament to admit the "people of our colonies into an interest in the constitution." "From six capital sources: descent, form of government, religion in the northern provinces, manners in the southern, education, the remoteness of situation from the first mover of government — from all these causes a fierce spirit of liberty has grown up. It looks to me narrow and pedantic to apply the ordinary ideas of criminal justice to this great public contest. I do not know the method of drawing up an indictment against a whole people."[2]

Burke's warning went unheeded. March 13, 1775, disregarding the protests of British merchants, the restraining act[3] received the royal assent. By this statute the trade of New England was confined to Great Britain, Ireland, and the British West Indies; and its people were cut off from the northern fisheries, one of their chief means of support. In April, after news of the approval of the acts of congress was received from America, a like restraint was put upon the commerce of all the

[1] Cobbett-Hansard, *Parl. Hist.*, XVIII., 221–299.

[2] Force, *American Archives*, 4th series, I., 1745 et seq.

[3] 15 George III., chap. x. Debates, in Cobbett-Hansard, *Parl. Hist.*, XVIII., 299 et seq.; Force, *American Archives*, 4th series, I., 1621–1716.

other colonies except New York and Georgia, which had refused to accept the Association, and North Carolina, which the ministers had been led to believe would be won over. All petitions for conciliation were slighted. William Howe, with Clinton and Burgoyne, was sent out to reinforce Gage, and with him also went Lord Howe as commander of the naval force. But before the two brothers—"bearing the sword and the olive-branch"—could reach America, the first blood of the Revolution had been shed on Lexington green.

The second provincial congress of Massachusetts met at Cambridge, February 1, 1775.[1] Under its authority the committee of safety—whose leading spirits were now John Hancock and Joseph Warren—made vigorous effort to put the province in a state of defence. Arms were distributed, provisions purchased, and military stores laid up. Express riders were appointed to call out the militia in case the troops should take the field. This activity was stimulated by the news from Parliament. Congress then determined to raise an army, and appointed a day of fasting and prayer. Although Gage hesitated to act on the rash suggestions of Dartmouth, that the colonists should be disarmed, he sent out expeditions to seize the military stores. A company of troops, ordered to Salem to bring off some brass cannon said to be deposited there (February 26), narrowly escaped a combat with the people,

[1] Force, *American Archives*, 4th series, I., 1323 et seq.

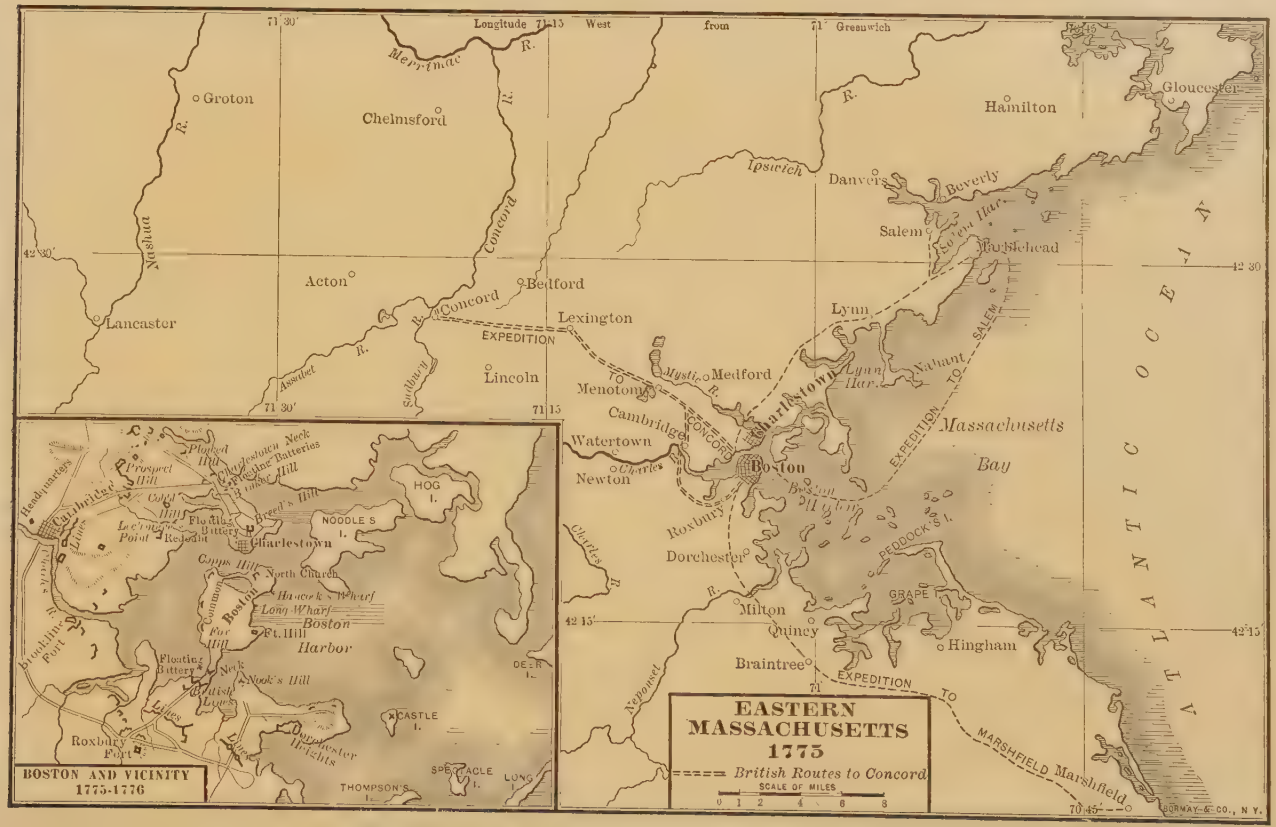
mainly through the good sense of the officer in command.

Gage now determined to send a secret expedition to destroy the magazines at Concord, a village eighteen miles northwest of Boston. To accomplish this task, on the night of April 18 Lieutenant-Colonel Smith set out with eight hundred men. The secret was not well kept, and William Dawes and Paul Revere were despatched to give the alarm.[1] About daylight the troops reached Lexington, a small town twelve miles from Boston. On the common near the church sixty or seventy of the "minute-men" under Captain Parker were drawn up. According to evidence which American historians have usually accepted as conclusive, Major Pitcairn commanded the provincials to lay down their arms and disperse. When the order was not promptly obeyed, the regulars began firing, and soon eight of the Americans lay dead or dying upon the green, while ten others were wounded.[2] After the battle the provincial congress of Massachusetts ordered depositions to be taken and a narrative prepared, with a view to fixing the responsibility for the commencement of hostilities. Of the sixty-two eye-witnesses, many of them members of Captain Parker's company, who testified regarding the fight at Lexington, all but one swore that the British began firing at the command of an officer before the minute-men had

[1] Hunt, *The Provincial Committees of Safety*, 13; Frothingham, *Siege of Boston*, 57. [2] *Ibid.*, 56–64.

very great: from New Hampshire to Georgia the colonies stood united. This unanimity was not wholly spontaneous; but it was due largely to the suddenly created revolutionary governments. In part through greater energy and superior organization, the patriots were everywhere able to triumph over the loyalist opposition. Lord North's plan of conciliation was not accepted in any colony. The assemblies refused to desert the common cause by acting separately, and referred the matter to the decision of the Continental Congress.

The military spirit was fast rising. May 10 a daring expedition under Ethan Allen, without authorization even from a revolutionary congress, seized the strong fortress of Ticonderoga, securing a large number of cannon and a vast quantity of military stores. Crown Point was likewise taken without opposition. The enthusiasm aroused by these events was not lessened by the news from Boston. The arrival of reinforcements under Howe, Clinton, and Burgoyne greatly augmented the army of Gage, and he resolved to take the offensive. On the night of June 16, to strengthen their besieging lines, the Americans seized and fortified the heights of Charlestown, known as Bunker Hill. The next day—after three desperate charges, and after the powder of the provincials had given out—the hill was taken by the British, but at a loss of over a thousand men—nearly one-third of the attacking force. For the Americans, who lost about four hundred and fifty,


Longitude 71° 15' West from 71° Greenwich
71° 30'
42° 30'
71° 15'
42° 15'
Groton
Chelmsford
Merrimac R.
Nashua R.
Concord R.
Acton
Lancaster
Bedford
Concord R.
Lexington
EXPEDITION
Lincoln
Sudbury R.
Assabet R.
Menotomy
Mystic R.
Medford
Cambridge
Charlestown
Watertown
Charles R.
Newton
Boston
Roxbury
Dorchester
Milton
Quincy
Braintree
Neponset R.
EXPEDITION TO SALEM
Lynn Har.
Nahant
Massachusetts Bay
Boston Light
PEDDOCK'S I.
GRAPE I.
Hingham
EXPEDITION TO MARSHFIELD
Marshfield
ATLANTIC OCEAN
Ipswich
Danvers
Beverly
Salem
Salem Har.
Marblehead
Hamilton
Gloucester
Lynn
EASTERN MASSACHUSETTS 1775
British Routes to Concord
SCALE OF MILES
0 1 2 4 6 8
BORMAY & CO., N.Y.
BOSTON AND VICINITY 1775-1776
Headquarters
Cambridge
Lines
Prospect Hill
Plowed Hill
Winter Hill
Intrenchment
Redoubt
Intrenchment Neck
Redoubt
Redoubt
Redoubt

the defeat had all the moral effects of a victory, for it deepened their conviction that they would be able to withstand the king's regulars.[1]

May 10, 1775, the Second Continental Congress had assembled in the state-house at Philadelphia; and soon it assumed the functions of a national government, which it continued to exercise for the next six years.[2] At first it acted rather as an adviser of the colonies than as a body vested with sovereign power. Thus counsel was given to New York regarding the proper treatment of the king's troops when they should arrive. May 26 it was unanimously resolved that the militia of that province should be armed and trained, "to prevent any attempt that may be made to gain possession of the city." The Massachusetts provincial congress, on its application, was advised to vest the government in an assembly and council, according to the forms of the ancient constitution, "until a governor, of his majesty's appointment, will consent to govern the colony according to its charter."

Congress soon found it necessary to undertake a sovereign function of the highest importance—the creation of a national army. On June 14 it was decided that continental troops should be raised. The next day—following a suggestion of John Adams—George Washington, of Virginia, was unanimously

[1] Frothingham, *Siege of Boston*, 113–174.

[2] A different view on this subject in Van Tyne, *American Revolution* (*Am. Nation*, IX.), chaps. ix, xi.

selected to "command all the continental forces, raised, or to be raised, for the defence of American liberty."[1] July 2 the man whose life and character during the next twenty-four years were to have a mighty influence for good in shaping the American nation arrived in Cambridge to discharge the first duty which that nation had laid upon him.

[1] *Journals of Congress*, I., 69–71, 73, 80, 83.

CHAPTER XVIII

THE CASE OF THE LOYALISTS

(1763–1775)

SOCIAL progress is made in two ways—by evolution and by revolution; through right reason and through catastrophe.[1] In the life of a people a crisis may come when violence seems to be the only means of advancement; but advancement by violence is terribly expensive in property, in morals, and in human lives. In this regard the American Revolution was no exception to the rule. Unlike the French Revolution, it was mainly political and not social: there were no frightful abuses of ancient class privilege to redress, for the old colonial system was in no way the result of conscious oppression. Its cardinal principles took their rise in economic ignorance, and very soon would have become a dangerous hindrance to social evolution had they been rigidly enforced.

Just here is the anomaly of the situation. The American Revolution differs from all other revolu-

[1] See the instructive paper of Andrew D. White, *Evolution and Revolution*. A body of selected arguments on both sides, in Hart, *Contemporaries*, II., chaps. xxiii–xxvii.

tions in the mode of its origin and in the swiftness of the catastrophe. With astonishing perversity the British ministry strove thoroughly to enforce the colonial system only after it was already becoming clear to thoughtful men that its principles were false. This resolve bore the likeness of a revolution in policy by which prescriptive rights long enjoyed were violently taken away. Meanwhile the colonists in political education had outstripped the Englishmen who remained at home. A fierce spirit of liberty had sprung up. With superior knowledge they had become exceedingly sensitive regarding their political rights. Moreover, the new restrictive policy was adopted just as the conditions had become favorable for the development of the nascent sentiment of union among the colonists.[1] Hence it is that in the short space of ten years the ministerial blunders, aggravated by the violent counsels of extremists in America, had brought the provinces to the verge of revolution.

While resistance was confined to debate and other legal forms of opposition, many conservatives could unite with the radicals in seeking a redress of grievances, though denying the validity of the revolutionary argument. Men like Seabury and Galloway freely condemned the policy of Great Britain. But when it was proposed to drop argument and seek redress by the sword, perhaps by separation, these and thousands of other worthy persons drew back,

[1] See chaps. i. and iii. above.

When hostilities began, the people were very far from being united, although the fact was in part concealed; for in most places the revolutionary party speedily got possession of the actual government and was able to silence opposition.

The American Revolution, like every revolution, brought earnest men face to face with tremendous cases of conscience which had to be solved. For revolution means violation of law, breach of allegiance, disturbance of the established social order. It means a rending of family and national ties, a wounding of sentiments which ages of historical association have fostered. It means a vast expenditure of blood and treasure and incalculable moral and physical suffering. Is the end in view worth the cost? This question the American people had to face, and the loyalists answered it emphatically in the negative. Is it not clear from the nature of the problem that they might do so and yet challenge our respect, even our admiration? They may have been mistaken; they may have been opposing the march of progress; but they were not necessarily actuated by motives less conscientious than those which inspired their adversaries. Triumphant revolution is apt to cover with obloquy the fame of many a moral hero whom history should respect and seek to understand. Happily the period of self-glorification is passing and the American student is learning to be just in his judgment on the case of the American loyalists.

For ten years the opposing parties of patriots and loyalists—of Whigs and Tories—had been gradually forming. From the very nature of the case, the active or aggressive party, under so astute a leader as Samuel Adams, was first to gain an effective organization, which was brought to completion by the creation of a continental congress. Of necessity this event at once drew more closely together all those who for whatsoever reasons refused to take the way of armed rebellion. "In a valid sense, therefore, it may be said that the formation of the great Loyalist party of the American Revolution dates from about the time of the Congress of 1774. Moreover, its period of greatest activity in argumentative literature is from that time until the early summer of 1776, when nearly all further use for argumentative literature on that particular subject was brought to an end by the Declaration of Independence."[1] In number, character, and the principles for which it stood, the loyalist party is a fact of decided interest, deserving the serious and respectful attention of every student of the American Revolution.

There is no means of finding out the actual number of Tories in any colony. At all times during the struggle a great body of the loyalists was found in New York[2] and Pennsylvania. Timothy Pickering

[1] Tyler, *Lit. Hist. of Am. Rev.*, I., 295, 296. Cf. Van Tyne, *Loyalists*, 3, 4.

[2] Flick, *Loyalism in New York* (*Columbia College Studies*, XIV.), 31–37 et seq.

called the last named province the "enemies' country"; while John Adams declared that "New York and Pennsylvania were so nearly divided—if their propensity was not against us—that if New England on one side and Virginia on the other had not kept them in awe, they would have joined the British." There were many Tories in Connecticut, New Jersey, Delaware, and Maryland. In Virginia they were less numerous than the Whigs; in South Carolina they were more numerous; "while in Georgia their majority was so great that, in 1781, they were preparing to detach that colony from the general movement of the rebellion, and probably would have done so, had it not been for the embarrassing accident which happened to Cornwallis at Yorktown in the latter part of that year."[1]

The loyalists themselves claimed that in the aggregate they constituted a positive majority of the American people, and that none of the decisive measures of the Revolution were sanctioned by a full or fair vote of any colony. In their belief, says Tyler, these measures "were the work of a well-constructed and powerful political machine, set up in each colony, in each county, in each town, and operated with as much skill and will and unscrupulousness as go into the operation of such machines in our own time." The same historian—the first

[1] Tyler, *Lit. Hist. of Am. Rev.*, I., 298, 299; Adams, *Works*, X., 63. Cf. Gilbert, "Connecticut Loyalists," in *Am. Hist. Review*, IV., 278 et seq.

American writer to make a just and adequate statement of the case for the loyalists—accepts as probably a fair estimate John Adams's opinion, approved by Thomas McKean, that about one-third of the people were at first opposed to the Revolution.[1]

The large body of loyalists represented nearly every type of character and motive, from the lowest to the highest. Among them were virtually the entire official class, embracing not only the mere placemen, often incompetent and corrupt, who had come to America to gain their fortunes, but also native Americans like Oliver and Hutchinson, who loved their country and had won respect and honor in its service. The crown officers "good and bad were the backbone of the Tory party in America."[2] Next to these were the clergy and members of the established church, the majority of whom were stanch loyalists. A third division comprised the mass of those who from tradition, circumstances, or training are usually inclined to be conservative. Here were found very many of the capitalistic, professional, and cultivated classes, with all those who revered monarchy and distrusted democratic institutions.[3] College presidents like

[1] Tyler, "The Party of the Loyalists," in *Am. Hist. Review*, I., 24, 25; *Lit. Hist. of Am. Rev.*, 293–383, esp. 300; Adams, *Works*, X., 63, 87, 110.

[2] Van Tyne, *Loyalists*, 4; *American Revolution* (*Am. Nation*, IX.), chap. iv.

[3] On the classes of loyalists, see Flick, *Loyalism in New York* (*Columbia College Studies*, XIV.), 31 et seq.

Cooper, of King's, and a great number of the graduates of Yale, Harvard, William and Mary, and other colonial institutions, remained loyal to Great Britain. Among the three hundred and ten Tories banished by Massachusetts in 1778 were sixty graduates of Harvard. "To anyone at all familiar with the history of colonial New England, that list of men, denounced to exile and loss of property on account of their opinions, will read almost like the bead-roll of the oldest and noblest families concerned in the founding and upbuilding of New England civilization."[1]

Doubtless many of the Tories, like many of the Whigs, were actuated by base motives. To their ranks at first would naturally come those who hoped to be on the safe side, and those who fancied that in the inevitable triumph of the king's troops they should be rewarded for their loyalty by a share in the confiscated estates of the vanquished. Yet among the two hundred thousand men and women who eventually went into exile or who died in the struggle were very many who in a just sense were true patriots and who as devotedly as their adversaries suffered for conscience' sake.[2]

The problem of the American Revolution was by no means a simple one. Whether viewed as a ques-

[1] Ellis, in Winsor, *Narr. and Crit. Hist.*, VII., 195; Tyler, *Lit. Hist. of Am. Rev.*, I., 303.

[2] For the loyalists during the Revolution, see Van Tyne, *American Revolution* (*Am. Nation*, IX.), chap. xiv.

tion of right or of expediency it had two opposite sides, either of which might well be taken by honest and thoughtful men. The constitutional maxim "no taxation without representation" was accepted as valid by both parties, but the loyalists denied that it had been violated. As an expression of mere law, the argument from virtual representation is invincible,[1] for the kind of representation which then satisfied the law and the constitution was very crude. Indeed, since the American Revolution, and even since the reform bill of 1832, in both the United States and England it is but slowly that the idea of a broader and more effective representation has prevailed; and we are beginning to realize that even now our system is very far from perfect.

Again, the loyalists frankly admitted that the colonists had real grievances which ought to be redressed. They were earnestly in favor of reform, and severely censured the policy of the ministers. Thus far there was substantial agreement among the best Americans. Regarding the proper remedy, however, there was not the same unanimity. The loyalists denied the expediency of refusing to pay taxes levied by Parliament, while they abhorred the thought of separation. In their view, oppressive taxes had not yet been laid; and there was no likelihood that such taxes ever would be imposed. It was, therefore, unwise to risk civil war by resisting precedents which might never be abused. Even in

[1] Cf. Burgess, *Political Science*, II., 65–69.

the crisis of 1774 they still had faith in argument, and, as already seen, they presented a definite plan for conciliation. Its author, Joseph Galloway, next to Hutchinson was the most conspicuous loyalist in America. He had long served his colony, Pennsylvania, as a member of the assembly, and with Franklin he had opposed the proprietary government and done what he could to have the province transferred from the Penn family to the crown.[1]

In 1775 Galloway published a pamphlet in defence of the "Plan" which the Continental Congress had rejected. It was many times reprinted both in America and Europe, and it is a powerful presentation of the best loyalist argument. In the outset he condemns the reign of terror which under the authority of congress the Whigs had set up: "freedom of speech suppressed, the liberty and secrecy of the press destroyed, the voice of truth silenced, a lawless power established throughout the colonies" depriving "men of their natural rights and inflicting penalties more severe than death." Next he insists that in its true nature the present controversy is "a dispute between the supreme authority of the state and a number of its members." Now in every state there must be "a supreme legislative authority, universal in extent"; in the British empire this supreme power belongs to Parliament. The colonies are a part of that empire; and hence

[1] On Galloway, see Tyler, *Lit. Hist. of Am. Rev.*, I., 369–383.

even in cases of taxation and internal police—contrary to the claim of congress—they cannot be exempt from its control and subject only to the king.[1]

On the other hand, in agreement with his adversaries, Galloway holds that the colonists are entitled to all the rights of Englishmen at home; for "the subjects of a free state, in every part of its dominions, ought in good policy to enjoy the same fundamental rights and privileges." Yet the colonists through their representatives have not shared the right of making laws binding upon them; but they ought to share it "in such manner as their circumstances admit of, whenever it shall be decently and respectfully asked for." "If the British state, therefore, means to retain the colonies in a due obedience to her government, it will be wisdom in her to restore to her American subjects the enjoyment of assenting to and dissenting from such bills as shall be proposed to regulate their conduct. Laws thus made will ever be obeyed, because by their assent they become their own acts. It will place them in the same condition with their brethren in Britain, and remove all cause of complaint; or if they should conceive any regulations inconvenient or unjust, they will petition, not rebel. Without this, it is easy to perceive that the union and harmony, which is peculiarly essential to a free society whose members are resident in regions so

[1] Galloway, *Candid Examination*, 1–4, 24, 30–32.

very remote from each other, cannot long subsist. The genius, temper, and circumstances of the Americans should be also duly attended to. No people in the world have higher notions of liberty. It would be impossible ever to eradicate them, should an attempt so unjust be ever made." The colonists must be united with Britain "upon principles of English liberty," or they "will infallibly throw off their connection with the mother country."[1]

Therefore, Galloway's remedy for the present grievances of the colonies is—not the course of violence recommended by congress, but a liberal constitutional union with the parent state. Even now, he says, it is not too late to apply this remedy. Reasonable petitions have never been refused a hearing, as American demagogues have asserted. "It is high time that this fatal delusion should be exposed, and the good people of America disabused. It is true that his majesty and the two houses of parliament have treated petitions from the colonies with neglect; but what were those petitions? . . . They disowned the power of the supreme legislature, to which as subjects they owe obedience." "Let us, like men who love order and government, boldly oppose the illegal edicts of the Congress, before it is too late,—pull down the licentious tyranny they have established, and dissolve their inferior committees—their instruments to trample on the sacred laws of your country, and your invaluable rights." When

[1] Galloway, *Candid Examination*, 34–36, 39, 41–43.

this is done and peace and order restored, let a proper petition be presented through your legal assemblies, and there is "no reason to doubt" that it will be graciously received and "finally terminate in a full redress of your grievances, and a permanent system of union and harmony, upon principles of liberty and safety."[1]

It must be frankly admitted that the arguments of Galloway, like those of Myles Cooper, Daniel Leonard, and Samuel Seabury—also called out by the proceedings of congress—were far from contemptible. His plan of conciliation, however just, came too late; and even if satisfactory to the Americans, it is very doubtful whether at any time after the Albany convention of 1754 it would have been acceptable to Great Britain. Certainly, in 1774 the time for conciliation was past unless England, taking the initiative, should make prompt, frank, and full concessions. All half-way or insincere measures, such as those proposed by Lord North, must prove utterly futile.

Making all due allowance for the alleged sinister influence of colonial politicians, we are now able clearly to see that the American Revolution was justifiable for two general reasons. First, the legislation of Grenville and his successors was a real grievance. The sugar act, the stamp act, and the Townshend revenue acts, though legal, were contrary to wise political policy and a violation of the

[1] Galloway, *Candid Examination*, 48–61.

spirit of constitutional liberty which the experience of a century had fostered in the colonies. The effect of these acts was aggravated by the ill-judged measures adopted to enforce them; and they were brought into contempt by the halting policy of the ministry.

Secondly, in the light gained by ten years' discussion, the old colonial system itself had become a grievance. It was seen to be a check to the full development of the American people. Hence, while learning to be more just regarding the merits of the loyalists, we have gained a more intelligent appreciation of the higher qualities of the men who achieved independence. Since the problem was so hard, the arguments sometimes so nicely balanced, all the more honor to those whose clearer vision guided them to a righteous solution! Politically, the revolutionary party comprised the best products of American experience: the men whose social consciousness was most fully aroused. Socially, its leaders stood on a lofty ethical plane. They represented a political sagacity, a higher race-altruism, which was capable of present sacrifice for the good of the coming generations.

For social progress is not guided by the devout conservatism of loyalists like Jonathan Boucher, who as a final remedy recommended passive obedience to a divinely appointed king and a divinely ordained church. "It is your duty," he exclaimed, "to instruct your members to take all the con-

stitutional means in their power to obtain redress. If these means fail of success, you cannot but be sorry and grieved; but you will better bear your disappointments by being able to reflect that it was not owing to any misconduct of your own. . . . Those persons are as little acquainted with general history, as they are with the particular doctrines of Christianity, who represent such submission as abject and servile. I affirm, with great authority, that there can be no better way of asserting the people's lawful rights, than the disowning unlawful commands, by thus patiently suffering." [1] Not to such men, however brave and conscientious, but to men equally conscientious and more clear-sighted and daring—to Adams, Franklin, and Washington—is the upbuilding of nations committed.

[1] Boucher, *View of the Causes of the Revolution*, 559.

CHAPTER XIX

CRITICAL ESSAY ON AUTHORITIES

BIBLIOGRAPHIES

THE most complete bibliography of the subject of this volume is found in Justin Winsor, *Narrative and Critical History of America* (8 vols., 1888–1889), VI., 68–112, 172–204, which may be used to advantage with his *Reader's Handbook of the American Revolution, 1761–1783* (1880). Of first-rate bibliographical value for the contemporary writings is Moses Coit Tyler, *Literary History of the American Revolution* (2 vols., 1897). For critical details may be consulted Joseph Sabin, *Dictionary of Books Relating to America* (20 vols., incomplete, 1868–1892). Similar aid may be gained from Isaiah Thomas, *History of Printing in America* (1874). Very helpful are J. N. Larned, *The Literature of American History, a Bibliographical Guide* (1902); and Edward Channing and Albert Bushnell Hart, *Guide to the Study of American History* (1896). Much of the earlier material in C. H. Van Tyne, *American Revolution* (*American Nation*, IX.), is applicable to the subject of this volume.

GENERAL SECONDARY AUTHORITIES

George Bancroft, *History of the United States* (10 vols., to 1782, 1834–1874; 6 vols., to 1789, 1885), presents the most detailed account of the beginnings of the Revolution. The book is the result of vast research, but it is marred by the author's pro-American bias, his well-known faults of style, and his disregard of the ethics of quotation marks

in the citation of documents. Except in the ten-volume edition, its value is further impaired by the failure to cite authorities. John Fiske, *American Revolution* (2 vols., 1892), has treated the subject in his usual charming manner; but he pays little attention to the causes. Richard Hildreth, *History of the United States* (6 vols., 1851–1856, revised ed., 1882), is accurate and just; but his style is dry and the analysis very faulty. The Scotch writer, James Grahame, *History of the United States* (2d ed., 4 vols., 1845), is a clear and forceful narrative, written from scanty source materials and under influence of extreme democratic sentiments. The period is likewise covered by John Marshall, *History of the Colonies* (1824); and Timothy Pitkin, *Political and Civil History of the United States* (2 vols., 1828), an accurate and judicial work containing valuable documents in the appendices.

A very able work from the patriotic point of view, drawn largely from the sources, is Richard Frothingham, *Rise of the Republic of the United States* (5th ed., 1890). James Albert Woodburn has written an excellent analysis of the *Causes of the American Revolution* (*Johns Hopkins University Studies*, X., No. 12); G. W. Greene, *Historical View of the American Revolution* (4th ed., 1876), has a chapter on the causes; and so has H. C. Lodge, *Short History of the English Colonies of America* (revised ed., 1902), who also gives a good account of social conditions in 1765. The causes are also treated by H. C. Lodge, *Story of the Revolution* (2 vols., 1898); Mellen Chamberlain, "The Revolution Impending" (Justin Winsor, *Narrative and Critical History*, VI.), is a thoroughly critical and enlightening essay; and there is a very fair summary by Edward C. Porter, "The Beginnings of the Revolution" (Justin Winsor, *Memorial History of Boston*, III.). The origin of the revolutionary movement is clearly and vigorously traced by Harry Pratt Judson, *The Growth of the American Nation* (1895). The beginnings of the West are discussed in Edwin Erle Sparks, *The Expansion of the American People* (1900); and his *Men Who Made the Nation* (1901) contains lively and entertaining chapters on the period. The early Revolu-

tion is likewise treated by Woodrow Wilson, *A History of the American People* (5 vols., 1902); and by Sidney Howard Gay (and, nominally, W. C. Bryant), *Popular History of the United States* (4 vols., 1878–1881; 5 vols., enlarged by Noah Brooks, 1896).

COLONIAL AND STATE HISTORIES

New England Colonies.—Among the more important works on the particular colonies we have Alden Bradford, *History of Massachusetts* (3 vols., 1822–1829), one of the best early accounts, the material for the early Revolution being drawn largely from the same author's *State Papers;* John Stetson Barry, *History of Massachusetts* (3 vols., 1855–1857); and Harry A. Cushing, *Transition from Province to Commonwealth Government in Massachusetts* (*Columbia College Studies*, VII., 1896), a thoroughly scientific study from the sources. The period is treated in a trustworthy manner in the second volume of Jeremy Belknap, *History of New Hampshire* (3 vols., 2d ed., 1813); Gideon Hiram Hollister, *History of Connecticut* (2 vols., 1857); Alexander Johnston, *Connecticut* (1887); Samuel Greene Arnold, *History of Rhode Island* (4th ed., 2 vols., 1894), a work of extraordinary merit; and Frank Greene Bates, *Rhode Island and the Formation of the Union* (*Columbia College Studies*, X., 1898), a painstaking monograph.

Middle Colonies.—A good account is contained in the second volume of Ellis H. Roberts, *New York* (1887). Important also are Carl Becker, "Nominations in Colonial New York," in *American Historical Review*, VI., 260; "Growth of Revolutionary Parties and Methods in New York Province, 1765–1774," in *ibid.*, VII., 56; and Charles H. Levermore, "The Whigs in Colonial New York," in *ibid.*, I., 238. A very scholarly work is Isaac Sharpless, *A History of Quaker Government in Pennsylvania* (2 vols., 1898–1899). There are careful monographs by Charles H. Lincoln, *The Revolutionary Movement in Pennsylvania* (*Publications of the University of Pennsylvania*, 1901); and William Robert Shepherd, *History of the Proprietary*

Government in Pennsylvania (*Columbia College Studies*, VI., 1896). On some points, Thomas F. Gordon, *History of Pennsylvania* (1829), may still be used with profit. See also the entertaining book of Sydney George Fisher, *Pennsylvania* (1897).

SOUTHERN COLONIES.—J. T. Scharf, *History of Maryland* (3 vols., 1879), contains many original documents, some of them inaccurately copied. William Hand Browne, *Maryland* (1884), devotes several interesting chapters to the period. There is a helpful study by John Archer Silver, *The Provisional Government of Maryland* (*Johns Hopkins University Studies*, XIII., No. 10); one by B. C. Steiner, *Western Maryland in the Revolution* (*ibid.*, XX., No. 1); and an excellent monograph by Newton D. Mereness, *Maryland as a Proprietary Province* (1901). For Virginia the best work is Charles Campbell, *History of the Colony of Virginia* (1859). There is much of value in William Meade, *Old Churches, Ministers, and Families of Virginia* (2 vols., 1857); John Daly Burk, *History of Virginia* (3 vols., 1804–1805), coming down to 1776; and the second volume of Robert R. Howison, *History of Virginia* (1848), deals with the Revolution. For North Carolina, besides Francis Xavier Martin, *History of North Carolina* (2 vols., 1829), and John W. Moore, *History of North Carolina* (2 vols., 1880), we have J. S. Jones, *Defence of the Revolutionary History of North Carolina* (1834); Enoch Walter Sikes, *Transition of North Carolina from Colony to Commonwealth* (*Johns Hopkins University Studies*, XVI., Nos. 10, 11); and Charles Lee Raper, *North Carolina: A Study in English Colonial Government* (1904), a sound discussion based on the colonial records. All the early histories of South Carolina are superseded by the admirable work of Edward McCrady, *South Carolina Under the Royal Government, 1719–1776* (1899); and W. Roy Smith, *South Carolina as a Royal Province* (1903). Consult also D. D. Wallace, *Constitutional History of South Carolina* (1899); J. B. O. Landrum, *Colonial and Revolutionary History of Upper South Carolina* (1897); and William A. Schaper, *Sectionalism and Representation in South Carolina* (American

Historical Association, *Report*, 1900, I.). For Georgia there are two good works, each derived from the original documents. The second volume of Charles Colcock Jones, *History of Georgia* (2 vols., 1883), is devoted mainly to the Revolution; and that epoch is well treated in the second volume of William Bacon Stevens, *History of Georgia* (2 vols., 1847–1859).

Discussion of the general authorities on the separate colonies will also be found in the Critical Essay on Authorities, in Lyon G. Tyler, *England in America*, Charles M. Andrews, *Colonial Self-Government;* Evarts B. Greene, *Provincial America* (*American Nation*, IV., V., VI.).

SECONDARY ENGLISH WORKS

An impartial discussion of the Revolution is that of William E. H. Lecky, *History of England in the Eighteenth Century* (8 vols., 1878–1890), III., chap. xii, passim, although he lays too much stress on alleged personal influences among the colonists. This part of Lecky's work has been separately edited by James Albert Woodburn under the title of *The American Revolution, 1763–1783* (1898). Sir George Otto Trevelyan, *The American Revolution* (3 vols., 1899–1903), is in full sympathy with the American side and brings out more clearly than does any other writer the moral and social causes of the movement. In a scientific spirit John A. Doyle has written a chapter, *The Quarrel with Great Britain, 1761–1776* (*The Cambridge Modern History*, VII., 1903). Among the older British writers the Tory bias of Lord Mahon (P. E. Stanhope), *History of England, 1713–1783* (3d ed., 7 vols., 1853–1854); and John Adolphus, *History of England, 1760–1820* (7 vols., 1840–1845); may be balanced by the Whig sentiment of W. N. Massey, *History of England during the Reign of George III.* (4 vols., 1855–1863).

AMERICAN COLLECTIONS OF SOURCES

A very convenient collection of original documents of every sort, for both America and Great Britain, is Peter

Force, *American Archives* (fourth and fifth series, 9 vols., 1837–1853), but it is carelessly printed and should be used with caution. Valuable material is likewise contained in Hezekiah Niles, *Principles and Acts of the Revolution* (reprint, 1876); Daniel R. Goodloe, *Birth of the Republic* (1889); Frank Moore, *Diary of the American Revolution from Newspapers and Original Documents* (1863); R. W. Gibbes, *Documentary History of the American Revolution, 1764–1776* (1855); John Durand, *New Materials for the History of the American Revolution* (1889), drawn from the French archives; William MacDonald, *Select Charters and Other Documents Illustrative of American History, 1606–1775* (1899); Albert Bushnell Hart, *American History Told by Contemporaries* (4 vols., 1897–1901), II., §§ 130 – 169. French observation of America, 1763–1775, is dealt with by Henry Doniol, *Histoire de la participation de la France à l'établissement des États-Unis d'Amérique* (5 vols., 1886–1899); and a work of unique value for the discussion of many special questions is George Chalmers, *Opinions of Eminent Lawyers, on Various Points of English Jurisprudence, Chiefly Concerning the Colonies, Fisheries, and Commerce of Great Britain* (2 vols., 1814; American ed., 1858).

Highly important for Massachusetts are Alden Bradford, *Speeches of the Governors . . . from 1765–1775, and the Answers of the House of Representatives* (1818), cited as Bradford, *Mass. State Papers;* and John Almon, *Collection of Interesting and Authentic Papers Relating to the Dispute between Great Britain and America, 1764–1775* (1777), cited as Almon, *Prior Documents.* These papers are supplemented by Governor Thomas Hutchinson, *Diary and Letters* (2 vols., 1883–1886); and by Governor Francis Bernard, *Select Letters* (1774). Similar collections are Gertrude Selwin Kimball, *Correspondence of the Governors of Rhode Island, 1723–1775* (2 vols., 1902–1903); for Maryland, W. H. Browne, *Correspondence of Governor Horatio Sharpe* (3 vols., 1888–1895); and for New York, the *Colden Papers*, in the New York Historical Society, *Collections*, Fund Series (29 vols., 1868–1897), IX., X.

COLONIAL AND STATE PUBLICATIONS

First among the sources are the various collections of laws, legislative records, state papers, and official correspondence. The most important are: *Journals of the Honourable House of Representatives of the Massachusetts Bay* (1723–1778); *Journal of the General Assembly of New York, 1691–1765* (2 vols., 1764–1766); *ibid., 1766–1776* (1820); *Votes and Proceedings of the House of Representatives of the Province of Pennsylvania* (6 vols., 1752–1776); *New Hampshire Provincial, Town, and State Papers* (12 vols., 1867–1883); *Records of the Colony of Connecticut, 1636–1776* (15 vols., 1850–1890), XI.–XV.; *Records of the Colony of Rhode Island* (10 vols., 1856–1865), VI., VII.; *Documents Relating to the Colonial History of New York* (13 vols. and index, 1856–1883), VII., VIII., X.; *Documents Relating to the Colony of New Jersey* (22 vols. and index, 1880–1900), VIII.–X., XVII., XVIII., cited as *New Jersey Archives; A Selection of Pennsylvania Archives*, three series (31 vols., 1852–1895); *Colonial Records of Pennsylvania* (16 vols., 1838–1852); W. W. Hening, *Statutes at Large of Virginia* (13 vols., 1809 – 1823), VII.–IX., passim; *Colonial Records of North Carolina* (10 vols., 1886–1890), VI.–X. The *Journals* of the Virginia house of burgesses are of the highest value; but they are extremely scarce, no library in the country having a complete set: consult the bibliography by J. Franklin Jameson, in American Historical Association, *Report*, 1897, pp. 432–437. See also the *Proceedings of the Conventions of Maryland, 1774–1776* (1836).

BRITISH OFFICIAL DOCUMENTS

For Great Britain the Cobbett-Hansard, *Parliamentary History*, XV.–XVIII.; Sir H. Cavendish, *Debates of the House of Commons, . . . 1768–1771* (3 vols., 1841–1843); *Journal of the House of Commons*, XXIX.–XXXVI.; *Journal of the House of Lords*, XXX.–XXXV.; *Protests of the Lords* (3 vols., edited by J. E. T. Rogers, 1875; or to 1767, edited by John Almon, 1767); *Calendar of Home*

Office Papers, 1760–1775 (3 vols., 1878–1899); *Statutes at Large* (109 vols., 1762–1866), are of course indispensable.

WORKS OF AMERICAN STATESMEN

Most important among the papers of the chief actors of the impending revolution are Benjamin Franklin, *Works* (10 vols., edited by Jared Sparks, 1840; or 10 vols., edited by John Bigelow, 1887–1888); John Adams, *Works* (10 vols., edited by Charles Francis Adams, 1850–1856); George Washington, *Writings* (14 vols., edited by W. C. Ford, 1889–1893); Alexander Hamilton, *Works* (9 vols., edited by Henry Cabot Lodge, 1885–1886); John Dickinson, *Writings* (3 vols., edited by P. L. Ford, 1895); or the edition of his *Political Writings* (1801); Thomas Jefferson, *Writings* (10 vols., edited by P. L. Ford, 1892–1899); Stephen Hopkins, *Rights* (1764); and Samuel Adams, *Writings*, edited by Harry Alonzo Cushing (1 vol. pub. 1904). See also the *Familiar Letters of John Adams and His Wife* (edited by Charles Francis Adams, 1876); Francis Hopkinson, *Miscellaneous Essays and Occasional Writings* (3 vols., 1792); William Eddis, *Letters from America, 1769–1777* (1792); Theodoric Bland, *Papers* (2 vols., edited by Charles Campbell, 1840–1843); Kate Mason Rowland, *Life of George Mason, 1725–1792* (2 vols., 1892); William Wirt Henry, *Patrick Henry: Life, Correspondence, and Speeches* (3 vols., 1891); Josiah Quincy, *Memoirs of Josiah Quincy, Junior, 1744–1775* (1825, 1874), containing Quincy's "Journal" and much other contemporary matter.

WORKS OF BRITISH STATESMEN

There is a wealth of similar materials for Great Britain. Of most service are Edmund Burke, *Works* (4th ed., 12 vols., 1871); *Chatham Correspondence* (4 vols., edited by W. S. Taylor, 1838); William Pitt, *Speeches* (new ed., 1848); supplemented by John Almon, *Anecdotes of William Pitt, Earl of Chatham* (7th ed., 3 vols., 1810); and by Francis Thackeray, *Chatham* (2 vols., 1827); *Grenville*

Papers (4 vols., edited by W. J. Smith, 1853); *Memoirs of the Marquis of Rockingham* (2 vols., edited by G. T. Keppel, Earl of Albemarle, 1852); John Russell, *Bedford Correspondence* (3 vols., 1846); and W. B. Donne, *Correspondence of George III. with Lord North, 1768–1783* (2 vols., 1867). The *Reports* of the Royal Commission on Historical Manuscripts contain many documents on the period, and their use is facilitated by the index in the American Historical Association, *Report*, 1898, pp. 611 et seq.

Much light is thrown on English social and political conditions by Horace Walpole, *Memoirs of the Court of George II.* (2d ed., 3 vols., 1847); *Memoirs of the Court of George III.* (4 vols., 1845; new ed., 3 vols., 1894); *Letters* (9 vols., edited by Peter Cunningham, 1857); Henry B. Wheatley, *Memoirs of Wraxall, 1772–1784* (1784); *Letters of Junius* (2 vols., edited by Woodfall, 1882); John Wilkes, *North Briton* (author's revised ed., 1766); James Earl Waldegrave, *Memoirs, 1754–1758* (1821); George Bubb Doddington, *Diary, 1748–1761* (1784).

CONTEMPORARY NARRATIVES

Among the historical accounts produced by persons who lived during or near the events which they describe are: G. R. Minot, *History of Massachusetts, 1748–1765* (2 vols., 1798–1803), giving the patriotic view; Abiel Holmes, *Annals* (2 vols., 1805); Mercy Warren (sister of James Otis), *History of the . . . American Revolution* (3 vols., 1805), whose book is supplemented by her letters to John Adams, in Massachusetts Historical Society, *Collections*, 5th series, IV., 315–511; and the remarkably fair and accurate *History of the Province of Massachusetts Bay* (3 vols., 1795–1828), by Governor Thomas Hutchinson, the foremost loyalist in America. Consult also William Moultrie, *Memoirs of the American Revolution, so Far as It Related to North and South Carolina and Georgia* (2 vols., 1802), in part based on personal observations; David Ramsay, *History of the Revolution of South Carolina* (2 vols., 1785); John Drayton, *Memoirs of the American Revolution* (2 vols., 1821), relating to the same

province; and Thomas Jones, *History of New York in the Revolutionary War* (2 vols., edited by E. F. de Lancey, 1879), a loyalist account written in England after the peace. It should be read with H. P. Johnston's critical *Observations* (1880). Of constant service is the *Annual Register* (beginning in 1759), much of the matter relating to American affairs probably being written by Edmund Burke, one of its founders. From it in part were compiled David Ramsay, *History of the American Revolution* (2 vols., 1791); and William Gordon, *History of the Rise, Progress, and Establishment of the Independence of the United States* (4 vols., 1788). These should be read in the light of the criticism by Orrin Grant Libby, "Ramsay as a Plagiarist," in *American Historical Review*, VII., 697; and *Critical Examination of Gordon's History of the American Revolution* (American Historical Association. *Report*, 1899, I., 365). In the Wisconsin Academy of Sciences, Arts, and Letters, *Transactions*, XIII., 419, this writer has proved that largely from the same source, directly or indirectly, were taken five other early histories of the period.

CONTROVERSIAL WORKS

On each side of the sea the Revolution produced a vast number of controversial pamphlets, most of which relate to particular episodes. Some of them are more general; for example, Governor Thomas Pownall, *Administration of the Colonies* (1764); *A Memorial to the Sovereigns of Europe on the State of Affairs between the Old and the New World* (1780), being a forecast of the future republic; William Griffith, *Historical Notes of the American Colonies and the Revolution, 1754 – 1775;* the anonymous *Rights of Great Britain Asserted against the Claims of America* (1776), of which Lord George Germain is believed to have been in part author; Richard Price, *Observations on the Nature of Civil Liberty . . . and the Justice and Policy of the War with America* (1776), being a plea for conciliation; J. Roebuck, *Enquiry whether the Guilt of the Present Civil War in America Ought to be Imputed to Great Britain or America* (1776).

POETICAL MATERIAL

Contemporary sentiment is reflected in Philip Freneau, *Poems* (1786; or F. L. Pattee's ed., 1902); Frank Moore, *Songs and Ballads of the American Revolution* (1856); *Illustrated Ballad History of the American Revolution, 1765–1783* (1876); John Trumbull, *M'Fingal: A Modern Epic Poem* (1782; edited by B. J. Lossing, 1864); *Poetical Works* (1820); Winthrop Sargent, *Loyalist Poetry of the Revolution* (1857); G. L. Raymond, *Ballads of the Revolution* (1887).

AMERICAN CONDITIONS

The condition of the colonies before and at the commencement of the period may be studied in Andrew Burnaby, *Travels through the Middle Settlements, 1759–1760* (2d ed., 1775); Edmund Burke, *An Account of European Settlements in America* (1760); and George Chalmers, *An Introduction to the History of the Revolt of the American Colonies* (1845). See also John Almon, *A Collection of Tracts . . . on the Subject of Taxing the American Colonies* (1773), and his *Charters of the British Colonies* (1775). For samples of contemporary political sermons, see John Wingate Thornton, *Pulpit of the American Revolution* (2d ed., 1876).

THE LOYALISTS IN THE PRELIMINARY PERIOD

The fairest treatment of the loyalists in the impending revolution is given by Moses Coit Tyler, "The Party of the Loyalists in the American Revolution," in *American Historical Review*, I.; and *Literary History of the American Revolution*, I. For New York there is an excellent monograph by Alexander Clarence Flick, *Loyalism in New York during the American Revolution* (*Columbia College Studies*, XIV., 1901). There is also a helpful study by G. A. Gilbert, "Connecticut Loyalists," in *American Historical Review*, IV., 273–291. The best general treatise is Claude Halstead Van Tyne, *Loyalists in the American Revolution*

(1902), or his *American Revolution* (*American Nation*, IX.). The older works of Lorenzo Sabine, *Biographical Sketches of Loyalists of the American Revolution* (2 vols., 1864); and Egerton Ryerson, *Loyalists of America and Their Times* (2d ed., 2 vols., 1880), should be used with caution as the investigation is often superficial. For the argument of the loyalists consult the literature analyzed by Moses Coit Tyler, *Literary History of the American Revolution*, I., and the materials in A. B. Hart, *Contemporaries*, II., Nos. 138, 154, 156–158, 166–169.

THE AMERICAN EPISCOPATE

Mellen Chamberlain, *John Adams the Statesman of the American Revolution* (1884), holds that the attempt to set up the Anglican episcopate in the colonies was an important cause of their separation from the parent state. He relies especially upon John Adams, *Works*, X., 185, and Jonathan Boucher, *View of the Causes and Consequences of the American Revolution* (1797), 150. The authority on the subject is Arthur Lyon Cross, *The Anglican Episcopate and the American Colonies* (*Harvard Historical Studies*, IX., 1902), who cites the entire literature. Important for the discussion are W. S. Perry, *History of the American Episcopal Church* (2 vols., 1885); S. E. Baldwin, *The Jurisdiction of the Bishop of London* (American Antiquarian Society, *Proceedings*, new series, XIII., 179–221); C. C. Tiffany, *History of the Protestant Episcopal Church in the United States* (1895), 266–286; Hawks, *Efforts to Obtain a Colonial Episcopate before the Revolution* (Protestant Episcopal Historical Society, *Collections*, I., 136–157); *Contributions to American Church History* (2 vols., 1836–1839).

THE EARLY WEST

The Draper MSS. in the library of the Wisconsin Historical Society are indispensable for a thorough history of early Kentucky and Tennessee. The best accounts of the institutional beginnings are George Henry Alden, *New*

Governments West of the Alleghanies before 1780 (Wisconsin Historical Society, *Bulletins*, II.), and Frederick J. Turner, "Western State-Making in the Revolutionary Era," in *American Historical Review*, I., 251. Of great value is the magnificent work of George W. Ranck, *Boonesborough*, supplemented by J. M. Brown, *Political Beginnings of Kentucky*, and R. T. Durrett, *The State of Kentucky* (all in Filson Club, *Publications*, VI., VII., XVI., 1890–1901). J. G. M. Ramsey, *Annals of Tennessee* (1853); J. Phelan, *History of Tennessee* (1888); N. S. Shaler, *Kentucky* (1885); Lewis Collins, *History of Kentucky* (revised ed., 2 vols., 1874); M. Butler, *History of the Commonwealth of Kentucky* (1834); R. G. Thwaites, *Daniel Boone* (1902); Justin Winsor, *The Mississippi Basin* (1895); *The Westward Movement* (1897); Theodore Roosevelt, *The Winning of the West* (4 vols., 1889–1896), are all of service. The proceedings of the Transylvania convention are in Force, *American Archives*, 4th series, IV., as well as in the works of Collins and Ranck above mentioned. The original documents relating to the Regulators in North Carolina are in *North Carolina Colonial Records*, VII.–IX. The best monograph on the subject is that of John S. Bassett, *Regulators of North Carolina* (American Historical Association, *Report*, 1894, pp. 141–212).

ECONOMIC CONDITIONS

The significance of the molasses act and the sugar act as affecting the West India trade is emphasized by George Louis Beer, *Commercial Policy of England toward the American Colonies* (*Columbia College Studies*, III., No. 2), 107, 148; by Mellen Chamberlain, in Justin Winsor, *Narrative and Critical History*, VI., 24–26, 63; and by W. B. Weeden, *Economic and Social History of New England* (2 vols., 1894), II., 745–768. Earlier evidence is given by Daniel Defoe, *A Plan for the English Commerce* (1741); Governor Francis Bernard, *Select Letters* (1774), 6, 7, 9–11; Joshua Gee, *Trade and Navigation* (3d ed., 1731), 72; Governor Thomas Pownall, *Administration of the Colonies* (2d ed.,

1765), 5, 6; and especially by G. R. Minot, *History of Massachusetts*, II., 140, 146–148, 164–166. The effect of the sugar act in Massachusetts is described by Governor Thomas Hutchinson, *History of Massachusetts Bay*, 104, and by Richard Frothingham, *Rise of the Republic*, 162. At this time appeared James Otis, *Rights of the British Colonies* (1764), and several other important pamphlets noticed in the text. The literature of the period is discussed by Moses Coit Tyler, *Literary History of the American Revolution*, I.,47 et seq.

On the restrictive system the best monograph is George Louis Beer, *The Commercial Policy of England toward the American Colonies* (*Columbia College Studies*, III., No. 2). We have also the excellent study of Eleanor Louisa Lord, *Industrial Experiments in the British Colonies* (*Johns Hopkins University Studies*, extra volume XVII.); Edward Channing, *The Navigation Laws* (American Antiquarian Society, *Proceedings*, 1890); W. J. Ashley, "England and America, 1660–1760," in his *Surveys Historical and Economic* (1900), criticising the popular view as to the oppressive character of the acts of navigation and trade. On the old colonial system, see also J. R. Seeley, *The Expansion of England* (1883); Lord Sheffield, *Observations on the Commerce of the American States* (1783); and the authorities cited in chap. iii. of the text. Consult especially Charles McLean Andrews, *Colonial Self-Government* (*American Nation*, V.), chap. i.; Evarts B. Greene, *Provincial America* (*American Nation*, VI.).

SPIRIT OF INDEPENDENCE BEFORE 1763

Before the conquest of Canada the dread of the French power felt by the English colonists is expressed by Jeremiah Dummer, *Letter to a Noble Lord* (1709); and in 1731 by Lieutenant-Governor Wentworth, in New Hampshire Historical Society, *Collections*, I., 227–230. The alleged advantage to England of leaving Canada in French hands is mentioned by Peter Kalm, *Travels in America* (1770), I., 262–265. The surrender of the conquered province is opposed by William Pulteney, *Letter to Two Great Men* (1760);

it was favored by William Burke, *Remarks on the Letter Addressed to Two Great Men* (1760); who is answered by Benjamin Franklin, *The Interest of Great Britain Considered* (1760; also in *Works*, Bigelow's ed., III., 83). See also Evarts B. Greene, *Provincial America* (*American Nation*, VI.), chaps. xi., xii.

EARLY PLANS OF UNION

The rise of a sentiment of union before the French war is discussed by Frothingham, *Rise of the Republic*, 101–157. Penn's plan is in *Documents Relating to the Colonial History of New York*, IV., 296; that of Franklin in his *Works* (Bigelow's ed.), II., 355–375; or in *Documents Relating to the Colonial History of New York*, VI., 889. There are other plans in *American History Leaflets*, No. 14. The effect of the strife with the governors and the clamor for taxation is shown by Bancroft, *United States* (ed. of 1885), II.; William Black, *Maryland's Attitude in the Struggle for Canada* (*Johns Hopkins University Studies*, X., No. 7); and Hubert Hall, "Chatham's Colonial Policy," in *American Historical Review*, V.

RESULTS OF THE FRENCH AND INDIAN WAR

On the general results of the war see John Adams, *Works*, II., 23; William E. H. Lecky, *England*, III., 290; Bancroft, *United States* (ed. of 1885), II.; Woodburn, *Causes of the American Revolution* (*Johns Hopkins University Studies*, X., No. 12, p. 557). On the population of the colonies consult Andrew Burnaby, *Travels* (2d ed., 1775), 76, 133, 134; F. B. Dexter, "Estimates of Population," in American Antiquarian Society, *Proceedings*, 1887; Bancroft, *United States* (ed. of 1885), II., 290; Lodge, *Short History*, 456; Judson, *Growth of the American Nation*, 55. See also R. G. Thwaites, *France in America* (*American Nation*, VII.), chaps. xvii., xix.

BRITISH POLITICAL CONDITIONS

The fullest discussion of political conditions under George III. is contained in T. E. May, *Constitutional History of*

England (2 vols., 1880, 1899). For statistics relating to parliamentary representation, F. H. B. Oldfield, *Representative History* (6 vols., 1816), is indispensable. The best general accounts of the reign may be found in William E. H. Lecky, *England in the Eighteenth Century;* John Richard Green, *History of the English People* (4 vols., 1880), IV.; and Sir George Otto Trevelyan, *American Revolution*, I. These may be supplemented by the older works of Adolphus, Mahon, and Massey. The principal sources are cited in the text, chap. ii.

WRITS OF ASSISTANCE AND PARSON'S CAUSE

John Adams's notes on James Otis's speech in the case of Paxton are contained in his *Works*, II., 521–523. This is somewhat extended in G. R. Minot, *History of Massachusetts* II., 87–99; in William Tudor, *James Otis*, 62 et seq.; in the copy by Israel Keith, in Quincy's *Reports*, 479–482; and supplemented by Adams's untrustworthy recollections in his letters to William Tudor, in his *Works*, X. Horace Gray, *Writs of Assistance*, in Quincy, *Reports*, is a masterly investigation of the subject from the sources. There is a good account of the speech in Moses Coit Tyler, *Literary History of the American Revolution*, I., 30 et seq.; and notices may be found in many of the histories of the period. The assertion of William E. H. Lecky, *England*, III., 328, that in England "cases of revenue fraud" might be tried in the admiralty court without a jury is not sustained by the evidence: see, for example, William Bunbury, *Reports of Cases in the Court of Exchequer* (1755), 236; Edward Coke, *Fourth Institute* (ed. of 1797), 134–146; especially James Kent, *Commentaries* (ed. of 1891), I., 375–378, and the cases there cited.

The early life of Patrick Henry and his speech in the Parson's Cause are treated by Moses Coit Tyler, *Patrick Henry* (1893); and by William Wirt Henry, *Patrick Henry* (3 vols., 1891), I. The *Life* by William Wirt (1818) is fascinating but uncritical. The report of Rev. James Maury, plaintiff in the suit, is given by Ann Maury, *Me-*

moirs of a Huguenot Family (1872). Many of the original documents in the controversy may be found in W. S. Perry, *Historical Collections Relating to the American Colonial Church* (3 vols., 1870), I. In general consult Charles Campbell, *History of the Colony and Ancient Dominion of Virginia* (1859); William Meade, *Old Churches, Ministers, and Families of Virginia* (1887); Andrew Burnaby, *Travels through the Middle Settlements* (1759–1760); Richard Bland, *Letter to the Clergy* (1760); and the other authorities cited in the text.

THE STAMP ACT AND ITS REPEAL

The debates on the Stamp Act in its three stages are in part recorded in Cobbett-Hansard, *Parliamentary History*, XVI.; and the best account of the resistance in America is given by Richard Frothingham, *Rise of the Republic*, 158–200. Bancroft's treatment is very full; Lecky has an enlightening discussion; and Hutchinson is helpful throughout the controversy. Among the more important writings called out by the contest are John Dickinson, *The Late Regulations* (1765); Daniel Dulany, *Considerations on the Propriety of Imposing Taxes* (1765); Stephen Hopkins, *The Rights of the Colonies Examined* (1764); on the British side, Martin Howard, *Letters from a Gentleman at Halifax* (1765); Soame Jenyns, *Objections to the Taxation of Our Colonies* (1765); and George Grenville, *Regulations Lately Made Concerning the Colonies* (1765). Franklin's examination is in his *Works* (Bigelow's ed.), III., 409–450; and the proceedings of the Stamp-Act congress are in Hezekiah Niles, *Principles and Acts of the American Revolution;* and John Almon, *Prior Documents.*

TOWNSHEND ACTS

For the colonies the best account of the period of the Townshend acts and the royal orders, 1767–1773, is Richard Frothingham, *Rise of the Republic*, 201–293. The proceedings in Parliament are in Cobbett-Hansard, *Parliamentary History*, XVI., and Cavendish, *Debates of the House of Com-*

mons, I. For Massachusetts, Alden Bradfold, *State Papers*, and Thomas Hutchinson, *History of Massachusetts Bay*, are in constant requisition. Lecky's account of the Boston "massacre" is just; while Bancroft is prejudiced in the extreme. On this episode see *Short Narrative of the Horrid Massacre in Boston* (1770); *A Fair Account* (1770); Frederick Kidder, *History of the Boston Massacre* (1870); and Richard Frothingham, "Sam Adams Regiments," in *Atlantic Monthly*, IX., 201, X., 179, XII., 595. J. R. Bartlett, *History of the Destruction of the Gaspee* (1861), or the same in *Rhode Island Colonial Records*, VII., 57–192, gives the original papers in this affair. E. D. Collins, in American Historical Association, *Report*, 1901, I., 243-271, discusses the committees of correspondence; there is an excellent study by J. Franklin Jameson, "Origin of the Standing Committee System in American Legislative Bodies," in *Political Science Quarterly*, IX.; and a careful monograph by Agnes Hunt, *The Provincial Committees of Safety of the American Revolution* (1904).

COERCION

Max Farrand, "The Taxation of Tea, 1767–1773," in *American Historical Review*, III., 266–269, clears up some popular errors regarding the tea acts. Justin Winsor, *Narrative and Critical History*, VI., 90–96, gives a bibliography of the tea incident and the port bill. The documents relating to the relief of Boston are in Massachusetts Historical Society, *Collections*, 4th series, IV. The episode of the Hutchinson letters is discussed by Benjamin Franklin, *Works* (Sparks's ed.), IV., 405–455, and in Peter Orlando Hutchinson, *Diary and Letters of Thomas Hutchinson* (2 vols., 1883–1886). See also J. K. Hosmer, *Samuel Adams* (1893); J. T. Morse, *Franklin* (1892); Sir George Otto Trevelyan, *American Revolution* (3 vols., 1899–1903), I.; John Bigelow, *Life of Franklin* (3 vols., 1874); and *Copy of Letters sent to Great Britain, by his Excellency Thomas Hutchinson, the Hon. Andrew Oliver, and several other Persons, Born and Educated Among Us* (Boston, 1773).

Victor Coffin, *The Province of Quebec and the Early American Revolution* (University of Wisconsin, *Bulletins*, I., No. 3, 1896), gives the best account of the Quebec act. See also his *Quebec Act and the American Revolution* (American Historical Association, *Report*, 1894); his paper in *Yale Review*, August, 1895; and Justin Winsor, "Virginia and the Quebec Act," in *American Historical Review*, I., 436–442. The proceedings of the first and second Continental congresses are in *Journals of the American Congress* (4 vols., 1823). The proceedings of the congress of 1774 and those of the provincial congress of Massachusetts may also be found in Force, *American Archives*, 4th series, I. Under the supervision of William Lincoln the state of Massachusetts has also published *The Journals of the Provincial Congress in 1774–1775* (1838). On these congresses there is a good paper by Albion W. Small, *The Beginnings of American Nationality* (*Johns Hopkins University Studies*, VIII., Nos. 1, 2). On Lexington and Bunker Hill the most important work is Frothingham, *The Siege of Boston* (4th ed., 1873). See also Charles Francis Adams, "The Battle of Bunker Hill," in *American Historical Review*, I., 401–413; the bibliographies in Winsor, *Handbook*, 26–59; and *Narrative and Critical History*, VI., 174 et seq.

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